SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No.
Purchased _____

----------X

SADIKI ANDERSON, WALLFORD GARCIA, DUDLEY CARTER, ANDRE WALTER, DERRICK MOULTON, DANE OMAR SPENCER, BARRINGTON GREEN AND MARK GOCUL,

VERIFIED COMPLAINT

Plaintiffs,

-against-

THE CITY OF NEW YORK, COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,

Defendants

----------X

SADIKI ANDERSON, WALLFORD GARCIA, DUDLEY CARTER, ANDRE WALTER, DERRICK MOULTON, DANE OMAR SPENCER, BARRINGTON GREEN and MARK GOCUL, by their attorneys, **PAPA, DEPAOLA AND BROUNSTEIN,** respectfully alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times mentioned, Plaintiff **SADIKI ANDERSON** was a resident of Bronx County, City and State of New York.

2. At all times mentioned, Defendant **CITY OF NEW YORK,** was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.

3. On or about the 12th day of December, 2012 and within ninety (90)days after the claim herein arose, the Plaintiff served a Notice of Claim in writing sworn to on their behalf upon the Defendant CITY OF NEW YORK, by delivering a copy thereof in duplicate to the officer designated to receive such process personally, which Notice of Claim advised the Defendant CITY

OF NEW YORK, of the nature, place, time and manner in which the claim arose, the items of damage and injuries sustained so far as was then determinable.

4. At least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety (90) days after the happening of the event upon which the claims are based.

5. The Plaintiff has complied with the request of the municipal Defendant's for an oral examination pursuant to Section 50-H of the General Municipal Law and/or the Public Authorities Law and/or no such request was made within the applicable period.

6. Upon information and belief, at all times mentioned, Defendants **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, **THE CITY OF NEW YORK.**

7. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants jointly and severally in their capacity as police officers, wrongfully touched, grabbed, handcuffed and seized the Plaintiff **SADIKI ANDERSON,** in an excessive manner about his person, causing him physical pain and mental

suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A SECOND CAUSE OF ACTION

8. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "7" with full force and effect as though set forth at length herein.

9. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally did place Plaintiff **SADIKI ANDERSON** in imminent fear of physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A THIRD CAUSE OF ACTION

10. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "9" with full force and effect as though set forth at length herein.

11. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and unlawfully arrested the Plaintiff, restrained him and his liberty and then took him into custody to a police station in the

County of the Bronx and there charged him with the crimes on Docket No. 2012BX021161. The Plaintiff was thereafter held in custody over the course of approximately three (3) days until he was released on his own recognizance. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FOURTH CAUSE OF ACTION

12. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "11" with full force and effect as though set forth at length herein.

13. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any valid warrant, order or other legal process and without any legal right, wrongfully and unlawfully imprisoned the Plaintiff, restrained him and his liberty and then took him into custody and causing him to be incarcerated as a detainee in the City of New York's Correctional Facility. The Plaintiff was thereafter held in custody over the course of approximately three (3) days before he was released. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FIFTH CAUSE OF ACTION

14. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "13" with full force and effect as though set forth at length herein.

15. Upon information and belief, on or about April 7, 2012 and from that time until the dismissal of charges on or about September 25, 2012 which was a favorable termination for the accused by the Honorable Judge presiding at, Bronx County Supreme Court, Defendants **CITY OF NEW YORK, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** deliberately and maliciously prosecuted Plaintiff **SIDIKI ANDERSON,** an innocent man without any probable cause whatsoever, by filing or causing a criminal court complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of falsely accusing the plaintiff of violations of the criminal laws of the State of New York.

16. The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiff and due to the absence of probable cause malice can be inferred.

17. The commencement of these criminal proceedings under Docket No. 2012BX021161 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.

18. As a result of the malicious prosecution, Plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearances to defend his liberty against these unjust charges.

AS AND FOR A SIXTH CAUSE OF ACTION

(This Cause of action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

19. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "18" as it set forth at length herein.

20. Defendants **DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996** were at all times relevant, duly appointed and acting officers of the City of New York Police Department.

21. At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

22. Plaintiff **SIDIKI ANDERSON** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

23. The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.

24. On or about April 7, 2012, the Defendants, armed police, while effectuating the seizure of the Plaintiff **SIDIKI ANDERSON**, did search, seize, assault

and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

25. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

a. Freedom from assault to his person;

b. Freedom from battery to his person;

c. Freedom from illegal search and seizure;

d. Freedom from false arrest;

e. Freedom from malicious prosecution;

f. Freedom from the use of excessive force during the arrest process;

g. Freedom from unlawful imprisonment.

26. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

27. The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A SEVENTH CAUSE OF ACTION

28. Plaintiff incorporates, repeats and re-alleges all of the allegations contained in Paragraphs "1" through "27" with full force and effect as though set forth

at length herein. (This Cause of Action applies to the City of New York and the officer sued in their official capacity should be characterized as a "Monell" claim.)

29. Defendant **CITY OF NEW YORK** and **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY.** has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.

30. **THE CITY OF NEW YORK** was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest a search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should not he used where a criminal defendant is not resisting arrest.

31. **THE CITY OF NEW YORK** is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:

    1. Probable cause must be present before an individual such as the Plaintiff herein can he arrested.

2. Excessive force cannot be used against an individual who does not physically resist arrest.

3. An individual who sustains physical injury at the hands of the police during the arrest process should receive prompt medical attention.

4. Police cannot stop, seize or search individuals as the Plaintiff herein, when they merely see two denizens of the City of New York having a conversation, place their hands close to each other, consistent with greeting an individuals give each other, where no United States currency or another object has been exchanged for the item nor have the police seen whether the object supposedly passed from on e individual was an illegal object and when after the search and seizure no contraband is seen or taken from the person of the plaintiff.

32. The foregoing acts, omissions and systemic failures are customs and policies of the **CITY OF NEW YORK** which caused the police officers to falsely arrest, maliciously prosecute, seize illegally and search the Plaintiff commit an assault/battery to his person and denied his prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

33. Defendant **CITY OF NEW YORK** was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police Officer Defendants, knew or should have known of the bad disposition of said Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact

that these officers were not suitable to be hired and employed by the **CITY OF NEW YORK** and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

34. To demonstrate a de facto policy of unconstitutional dimension, one might only look at the stop and frisk program initiated by Commissioner Raymond Kelly, who has been NYPD Commissioner for over ten (10) years.

35. Upon information and belief, on or before April 7, 2012, the City and Kelly had instituted a highly aggressive "Stop and Frisk" program or policy that was carried out by its police officer employees, including the named defendant officers.

36. In the decade since Kelly has been appointed Police Commissioner, the number of reported annual "street stops" rose from 97,000 in 2002 to 684,330 times in 2011. Upon information and belief, said rise is due to the policies, directives and procedures implemented or approved by the "City" and/or "Kelly".

37. Upon information and belief, as part of its Stop and Frisk Program, the City, Kelly and the NYPD, provide multiple levels of training that covered Stop and Frisk procedures. That includes, but is not limited to, a workshop on Stop and Frisk, videos about the law of reasonable suspicion, patrol guidelines, Operational memorandum and ongoing training after graduating from the Police Academy.

38. Upon information and belief, this program, hereinafter referred to as "Stop and Frisk", disproportionately targeted minorities, males and/or youths for

stop, question and/or frisks, resulting in the excessive use of force disproportionately against minorities, and violated the constitutional rights of citizens of New York City, including citizens residing within the confines of Bronx County.

39. In the matter of David Floyd et al. v. City of New York at al. 283 FRD 153, United States District Court, Southern District of New York, Justice Scheindlin, stated that "it is indisputable that the NYPD has an enormous stop and frisk program. There were 2.8 million "documented" stops between 2004 and 2009. These stops were made pursuant to a policy that is designed, implemented and monitored by the NYPD administration" (Order Page 12).

40. Of the reported 1,121,470 stops, question and frisks "reported" in 2008 and 2009 alone, 37% or 416,350 were for individuals between the ages of 14 and 21 (according to the 2010 census this age range represents only 10% of the City population). Thus, we submit that the defendant's stop and frisk policy us heavily and disproportionately focused on youths of New York City, especially minority youths.

41. Statistical evidence further shows that pursuant to the NYPD stop and frisk policies and procedures, a great majority of civilians who were subjected to stop, question and/or frisk had not committed any crime, and that the NYPD engaged in said actions without reasonable suspicions of criminality. Furthermore, statistics show that blacks and Latinos were disproportionately targeted for stops, summons, arrests and excessive use of force.

42. Upon information and belief, it was statistically revealed that of the reported

stops and frisks conducted by the NYPD between 2004 and 2009, officers' "suspicions" of criminality was wrong nearly 9 out of 10 times.

43. Upon information and belief, the City, NYPD, and/or Kelly were long aware of the racial disparity of police stop and frisks. In 2007, the NYPD commissioned a study through The Rand Center on Quality Policing to study their stop, question and frisk patterns and practices. The study found that of the half a million persons stopped only 11% were Caucasians, 53% black and 219% Hispanic. Moreover, of the people that were stopped, 45% of Black and Hispanics that were stopped were frisked, while 29% of Caucasians that were stopped were frisked. Yet, when frisked, white suspects were 70% likelier than black suspects to have a weapon on them. (Rand study analysis of racial disparity in the New York Police Department Stop, Question and Frisk Practice, page xi)

44. The Rand report found that black pedestrians were stopped at a rate 50% greater than their representation in the residential census. RAND report page xi. The Rand report made several recommendations to the NYPD to "improve interactions between police and pedestrians during stops and to improve the accuracy of the data collected during pedestrian stops" (Rand page xv). Some of the many recommendations proposed include: review boroughs with the largest racial disparities in stop outcomes; record the reason(s) that the need to use force was used; monitor radio communications to make sure stop and frisk forms are being filled out; and identify, flag and investigate officers with out of the ordinary stop patterns. Finally, the report found "some correction in training during new officers'

initial days on the street might be in order, particularly for any evaluation of Operation Impact practices" (Rand page xvi).

45. Upon information and belief, the defendants did not adopt these suggestions, and as of April 7, 2012, still continued to stop, frisk, search and use force on minorities in a disproportionate manner and target their stop and frisk polices in predominately non-white precincts within the City of New York.

46. Upon information and belief, police officers routinely engage in "stops" and then attempt to justify the stop and/or frisk, when in fact the basis for the stop or stop and frisk was pretextual and/or discriminatory in nature. Upon information and belief, frisks and/or searches are conducted without justifiable reasons.

47. According to a statistical analysis conducted by Colombia University Professor Jeffrey Fagan, submitted in the Floyd case, police cited (as a reason for stop and frisk) a "suspicious bulge" in 10.4% of all stops, yet a gun was found in .15% of all stops (or 1 out of every 69 persons stopped on suspicion of concealing a weapon). Furtive movements were cited as a reason in more than 50% of all stops.

48. Professor Fagan also statistically found that "NYPD stop and frisks are significantly more frequent for Black and Hispanic residents than they are for White residents, even when adjusting for local crime rates, racial composition of the local population....." Floyd at 29. He further statistically found that when stopped Blacks and Latinos are treated more harshly than Whites stopped on suspicion fo similar criminal activity. The term Black,

White and Latinos are included within the NYPD reports and are adopted herein.

49. Analyzed date of the Stop and Frisk Program revealed in a report released by the Center for Constitutional Rights in 2012 found:

1) Analysis of the information recorded by police officers themselves in their stop and frisk reports indicates that more than 95,000 stops lacked reasonable, articulable suspicion and this violated the Fourth Amendment.

2) The NYPD continues to frequently and indiscriminately use the highly subjective and constitutionally questionable categories of "high crime area" and "furtive movements". "High crime area" is checked off in more than 60% of all stops. A comparison of actual crime rates to the claim that a stop was in a "high crime area" reveals that this factor was cited roughly the same rate regardless of the crime rate. "Furtive movement" was also checked in a majority of stops, 53% of them. Here, too, there was no correlation between the frequency of this stated reason for a stop and actual crime rates. Both the frequency of these classifications and their complete absence of any relationship to actual crime rates suggest strongly that they are not legitimate indicators or reasonable, articulable suspicion.

3) Only 6% of stops result in arrest, an extraordinarily small number given that stops are legally supposed to be based on reasonable, articulable suspicion. The rates of seizure of weapons or contraband are minuscule - .12% of stops yield gun seizures and 1.8% contraband - and are lower than the seizure rates of random stops.

50. Since 2009 the number of Stop and Frisks has dramatically risen. In 2010, there were a reported 601,055 stops.

51. For the calendar year 2011, New York City precincts reported 685,724 "stops." Of that total number 350,743 were categorized as stops of persons of black descent and 223,650 were of Latino descent (this does not include the number of individuals who were not categorized and who may be of black or Latino descent). Thus, 83.7% of individuals stopped were categorized as "minorities." Of the 381,704 person frisked in 2011, 330,638 (89.2%) were black and Latinos and 27,341 (7.4%) were whites.

52. According to a 2010 census, blacks make up 25% of the City's population, Latinos 29% and whites 33%.

53. Statistical data also revealed that stop and frisk practices, when measured against the composition of the precinct population, was employed at a much greater frequency in precincts whose population was composed predominantly of minorities. In 2011, the 73rd, 23rd, 81st, 41st and 25th precincts (Brownsville, East Harlem South, Bed Stuyvessant East, Hunts Point and East Harlem North) stopped 29.1%, 23.9%, 21.8%, 21.7% and 20.9% of their populations respectively. Meanwhile, in the Upper East Side (19th Pct.), Bensonhurst (62nd pct.), Bay Ridge (68th pct.), Totenville (123rd pct.) and Borough Park (66th pct.), each predominantly white precincts, residents were stopped at a rate of 2.5%, 2.4%, 2.3%, 2.1% and 2.0% of their populations. The same pattern holds true when the stops resulted in frisks. The top 5 precincts reporting the most number of frisks were minority populated precincts, such as the 75th, 73rd, 44th, 115th and 40th, while the least

amount of frisks were conducted in white populated precincts such as the 94th, 18th, 123rdm 17th and 22nd.

54. Even in traditionally white neighborhoods, such as the 17th pct. (East Side, Manhattan), black and Latino residents are stopped at a disproportionate rate when compared to its white citizens who reside within the same pct. To illustrate the point, in 2011, 71.4% of all stops made in Kipps Bay/Murray Hill, NY, were made against blacks and Latinos. Yet, they account for only 7.8% of the total precinct population. In Greenwich Village, where blacks and Latinos comprise only 8% of the precinct, they accounted for 76.6% of all stops. (New York Civil Liberties Union Stop and Frisk 2011 Report) The same reports also cites the additional precincts engaging in the same practice: 19th, 123rd, 1st, 61st, 11th, 20th, 13th and 62nd.

55. It was further reported that at least one act of force was used in 148,079 "stops" (or in 21.5% of the total number of stops in 2011), with 76,483 reported the use of force against blacks, (21.8% of all stops of the 350,743 stops made against them in 2011). It should be noted that 51.7% of all "reported" instances of use of force by New York City Police were made against persons that the NYPD categorized as "black". In 2011, blacks and Latinos had force used against them 129,590 times as compared to white, 9,765 times.

56. To illustrate the prevalence of the use of force within the context of the "Stop and Frisk" program, it should be noted that the number of stops in which at least one act of force was "reported" as being used (148,079 times) exceeded the total number of summons (41,215) and arrests (40,883) made from

reported "stops" in New York City in 2011 (total 82,098). Thus, it was 1.8 more times likely that force was used by police during a stop and frisk encounter than it was that said encounter resulted in an arrest or a summons being issued.

57. Upon information and belief, the City and Kelly and/or NYPD, either condoned the use of stop and frisk program, or the use of force in conjunction with it, as "means to an end", or acted with deliberate indifference to the knowledge that it was being utilized in that manner in a vast number of cases where there was no reasonable suspicion or no evidence of any criminality that would justify the use of any force, or force to the degree it was used, much less the initial stop and frisk.

58. The City, and/or Kelly sought to justify the tremendous increase in the stop and frisk program by claiming that the program helped rid the City of illegal guns. Yet, that contention or rationale is not statistically borne out. Nor would it serve as justification to violate the laws of the United States Constitution or the State of New York. In 2003, the NYPD conducted 160,851 stops and recovered 604 guns. In 2011, the NYPD conducted 685,724 stops, or an additional 524,873 stops when measured against 2003 statistics. Yet they only recovered and extra 176 more illegal guns as, or a total of 780. That computes to a .0003% success rate for the additional stops made.

59. Upon information and belief, the City and/or Kelly acted with deliberate indifference to: statistical evidence that enforcement or application of the "Stop and Frisk" program was highly unlikely to result in an arrest, a

summons or the recovery of weapons or contraband. (Weapons were recovered in 1.14% of the total number of stops reported in 2011.)

60. In fact, the City and/or Kelly were deliberately indifferent to statistical evidence/reports/information/complaints and other information that they possessed that indicated that: the stop and frisk program was targeting minorities, targeting minority communities or precincts; evidence that the stop and frisk program was racially biased; the program was targeting youths; officers were using force, including unnecessary or excessive force on carrying out this program; the program was being unconstitutionally applied; the training police officers received was inadequate, and that there was a need for proper training in the academy, for supplemental training in service, and for in-field supervision and training in the laws of the 4th Amendment, the legal use of force, for reasonable suspicion and general police guidelines and search and seizure laws and parameters.

61. Upon information and belief, the City and/or Kelly, acted with deliberate indifference that the aforementioned issues would, could and did result in the countless violations of constitutional rights of its citizenry.

62. Upon information and belief, prior to April 7, 2012, the City and/Kelly, failed to require that precinct commanders audit each officer worksheets, and failed to maintain or develop a system or methodology for identifying and tracking police officers who receive a baseline number of civilian complaints related to improper stops, improper frisks or searches, unnecessary or excessive use of force, threats, illegal entry into citizen's homes and/or discourtesy.

63. The stop and frisk program especially targeted minority youths in the 14-24 age range.

64. Although Blacks and Latinos males between the ages of 14 and 24 account for only 4.7% of the City's population, they accounted for 41.6% of all stops in 2011. White youths in the same age group account for 2% of the City's population and were responsible for only 3.8% of the total number of stops. In 2011, young black men between the ages of 14 and 24 were "reported" being stopped 168,126 times, which exceeded the total number of young black men in this age range who reside in New York City (158,406).

65. Minority youths were particularly vulnerable not only to stops, or stop and frisks, but more alarmingly to the use of force by the NYPD. As reported in Growing Up Police in the Age of Aggressive Police Policies, by Brett G. Stoudt, Michelle Fine and Madeline Foz, in New York Law School Review, Volume 56, 2011/12, youths who were stopped during the two year period if 2008-2009 were frisked 61.3% of the time, they were arrested 5.4% of the time, issued summons 5.1% of the time and weapons were found on the youths 1.2% of the time (most if the weapons recovered were knives, guns comprised only 17% of the total weapons recovered). Yet, it was reported that force was used against the same youths 26.3% of the time, or approximately 2 ½ times more than the likelihood of being arrested or issued a summons. It was also found that reports of youths carrying a suspicious bulge or object, actions indicative of engaging in a violent crime, or an object in plain view 10.5%, 9.6% and 1.7% respectively, were highly unreliable and unlikely to lead to the recovery of an illicit gun. The total

number reported (using the aforementioned criteria) of stop and frisks of youths were 90,756, yet the total illegal guns recovered (under any basis or criteria for reasonable suspicion) was 831 during that period, or .009%.

66. In all, 416,350 youths (381,578 or 91.6% were males and 218,260 of the total youths stopped (52.4%) were categorized as black or African American) were stopped during the 2008-2009 and 405,898 (97.5%) of them were free of weapons or contraband. Only 10% of the total youths stopped were white youths and only 7% female from 2008-2009.

67. Upon information and belief, the "stop and frisk" program: targeted or was applied, in a discriminatory manner against minorities; was applied or enforced in predominately minority communities; was age biased against youths, age 14-24; and was gender biased (against males) as well.

68. These youths were also subjected to the unnecessary use of force. Stodt, Fine and Fox further reported that of the 109,499 times that force was used against youths in 2008 and 2009, the police in 2,142 instances, (more than twice the number if times that any weapon was recovered) drew their firearm and/or pointed their firearm at a suspect. In the other 107,357 cases where force was reportedly used, it included hands on suspect, placing the suspect on the ground or against a wall/car, the use of a baton or pepper spray among other things.

69. The racial, gender and age disparity of these statistics could not and should not have been ignored.

70. Upon information and belief, the NYPD issued a Department Operations Order in 2002 prohibiting racial profiling. Nevertheless, upon information

and belief, racial profiling continued to be utilized as a policing tool of the NYPD as of April 7, 2012. Moreover, there was no Operations Order or directive prohibiting any type of gender or age bias application of policing practices in place on that date.

71. Police Commissioner Kelly has stated that the Stop and Frisk Program, and the "stops" thereunder, serve as a deterrent to criminal activity, which includes the criminal possession of a weapon. Therefore, he endorsed, and upon information and belief, continues to endorse said program and have it applied by the police officers under his command, although said program was being used to stop and stop and frisk citizens without reasonable suspicion, and in a racially biased manner.

72. Upon information and belief, this Stop and Frisk program was in effect on April 7, 2012 and was trained, implemented and overseen throughout the City of New York and all precincts therein, including the NBBX by Det. Bryan Pitts and Det. Gena Jonas.

73. While the aforementioned statistics were compiled for all New York City precincts, the statistics are particularly alarming for the Bronx, where the plaintiff resides.

74. The most common reason used by the NYPD to justify stopping civilians of New York City, almost 90% of whom had committed no crime or violation, falls predominantly within the category "furtive movements." In 2011, that reason was given in 51.3% of the total number of stops.

75. However upon information and belief, the City and/or Kelly, either failed to train officers what constitutes "furtive movements", or acted with deliberate

indifference to the need enhance or supplement training in the area; they acted with deliberate indifference to the unequal application of stop and frisk procedures when "furtive movements" are committed by "whites", not resulting in "stops", while the same movements when committed by minorities resulted in "stops"; and they acted deliberate indifference to the knowledge that "furtive movements" was not a statistically reliable marker of possession of contraband, weapon, or that a person has committed, or is about to commit a crime. In sum, "furtive movements" has been statistically proven to be unreliable to establish reasonable suspicion to justify a stop, or a stop, question and frisk.

76. The aforementioned statistical proof shows that said reasons or rationale for said stops were inaccurate, unreliable, untrue or without statistical probability of success.

77. Further evidence of the defendants' over aggressive stop and frisk policies which targeted minority communities, such as the Wakefield section of the Bronx, can be found in the Trespass Affidavit Program, formerly known as Operation Clean Halls. In Ligon v. City of New York, No. 12, Civ 2274, plaintiff brought an action alleging that the NYPD's trespass stops outside TAP buildings are often without reasonable suspicion, violating the 4th Amendment rights. Justice Scheinldin in a written decision filed January 8, 2013, agreed.

78. In her decision, Justice Scheindlin stated "while it may be difficult to say where, precisely to draw the line between a constitutional and unconstitutional police encounter, such a line exists, and the NYPD has

systematically crossed it while making trespass stops outside TAP buildings in the Bronx." (Ligon page 10)

79. Although Bronx District Attorney Jeanette Rucker sent memos to NYPD Police Commanders and police officials expressing her concerns of the reasons police were providing for stopping innocent individuals outside Clean Hall building, her concerns were unheeded.

80. Dr. Fagan concluded that 63% of "the recorded trespass stops outside the Clean Halls building in the Bronx in 2011, where no indoor behavior was observed were not based on any articulated reasonable suspicion." (Ligon at 67)

81. Although Sidiki Anderson's case does not involve a Clean Halls Building or fall within the TAP program, it does fall within the umbrella fo the defendants' over aggressive policing policies directed at minorities and at minority communities, and their failure to adequately train and supervise its officers in the laws and parameters set by the 4th Amendment. The actions taken by the officers on April 7, 2012 as will set forth herein, resulting in Sidiki Anderson's constitutional violations, stems in large measure, from the policies, customs and procedures set by the defendants, including the stop and frisk program, the inadequate training and supervision of, and by its officers, and/or the pressures exerted by the City, NYPD and/or Kelly to meet performance standards measured by the number of arrests made and summons issued.

82. Upon information and belief, said Stop and Frisk program was established, maintained, supervised, continued, applied and monitored to meet

arrest/summons, numbers/quotas and to establish and/or meet performance standards.

83. Upon information and belief, the NYPD, City and/or Kelly established performance standards which demanded, or resulted in increased levels of stops and frisks.

84. According to the 10/17/11 Police Officer Performance Objectives Operation Order, Commissioner Kelly directed all commands that "Department managers can and must set performance goals" relating to the "issuance of summons, the stopping and questioning of suspicious individuals, and the arrests of criminals."

85. The same Operation Order stated "uniformed members.....Who do not demonstrate activities...or who fail engage in proactive activities..will be evaluated accordingly and their assignments re-assessed."

86. In the Floyd case, Justice Scheindlin cited evidence of a quota system which included a minimum number of monthly "stops." Said evidence includes:

1) the deposition of Inspector Dwayne Montgomery, Commander of the 28th Precinct, who testified that he expected his officers to conduct a minimum of 2.3 stop and frisks per month and used that number "as a way of just gauging whether or not they were doing their job." Floyd at 20.

2) Police Officer Adhyl Polanco of the 41st Precinct testified that his commanding officers announced specific quotas for arrests and summons. He further testified that officers were threatened with reduced overtime or reassigned for failure to meet quotas.

3) Police Officer Adrian Schoolcraft recorded all roll calls at the 81st Precinct where supervisors were yelling and instructing officers to conduct unlawful stops and arrest to meet higher performance numbers. This order was coming down "the chain of command." The statements were made by Lt. Delafuents, Deputy Inspector Mauriello and Sgt. Stukes and cites the instructions of Chief of the Transportation Bureau of the City of New York Police Department, Michael Scagnelli.

4) Police Officer Luis Pichardo of the 28th Precinct offered testimony that his supervisors imposed a five summons per tour quota.

87. The acts of police officers who violate the civil and constitutional rights of the citizens of New York routinely go unreported by fellow police officers, not investigated by their superior officers, and consequently their acts, actions, omissions go unpunished. Failure to intervene and report is the norm, not the exception. In none of the case cited in paragraph 106 a-w above did the police officers intervene in the face of misconduct; nor did they report the misconduct of their fellow officers or receive any punishment for having failed to do so. Consequently, the acts of police officers in which they use excessive force, engage in racial profiling, making or file false arrests and reports, make warrantless entry into citizens' homes, etc., are condoned by other officers present, their supervisors, precinct commanders, including Assistant Chief Purtell and the NYPD Commissioner Kelly.

88. The City's and/or NYPD tolerance for brutality, excessive force, illegal and/or retaliatory arrests, and their emphasis to "come down hard on quality of life infractions", leads to a systemic practice and policy wherein City officials seem fairly tolerant, both outwardly and inwardly of police brutality, silence in the face of brutality and/or illegal stops, frisks, searches, seizures and/or arrests, warrantless entry into citizens' homes and engage in arrest quotas. A systemic practice where officers who report said misconduct are not viewed as "good cops", but rather as outcasts and snitches and are isolated, ostracized and often transferred, thereby perpetuating the illegal conduct of the officers.

89. Some instances where officers were treated as outcasts for reporting misconduct and/or an arrest/summons quota system are as follows:

a. the existence of arrest quotas, summons quotas and approval of illegal stops and arrests have been exposed by Police Officer Adrian Schoolcraft in a separate lawsuit which was cited by Justice Scheindlin, in David Floyd et al v. The City of New York, 08 Civ 1034.

b. Justice Scheindlin cited the deposition of Police Officer Adhyl Polanco of the 41st precinct, stating that commanding officers set specific quotas for arrests and summons and for stop and frisks (UF-250's), and threatened to reduce overtime for officers who failed to perform well and to reassign those who fail to meet quotas to less desirable posts.

c. According to secretly taped recorded conversations made by Schoolcraft, a Lieutenant, a Deputy Inspector and a Chief of the Division of Transportation all can be heard encouraging/demanding increased stops, summons, detentions and/or arrests.

d. Police Officer Craig Matthews of the 42nd precinct filed a lawsuit against the NYPD claiming the existence of a quota system and a systematic retaliation and harassment to those who did not comply.

e. Recently, retired Detective James Griffin, filed a lawsuit claiming that in the NYPD there exists a culture wherein officers who report corruption, face harassment and a hostile work environment and this conduct was tolerated by supervisors within the NYPD.

90. Upon information and belief, arrest quotas and summons quotas, often couched by the defendants as "performance standards", are ingrained as a part of a NYPD officer's job, leading to shortcuts and violations of citizen's constitutional rights to meet those so called performance levels.

91. In the matter of Dominguez v. City of New York, a lawsuit pending in Bronx Supreme Court under Index #305140-2011, a named defendant, Sgt. Karl Kindred of the Bronx Narcotics Division and a supervisor, stated under oath on April 19, 2013 at his deposition, see P. 32-37, **see Exhibit One**, that "all individuals who were merely present in an apartment would be arrested if it was pursuant to a search warrant", which clearly is not the law.

92. Further evidence of a pattern, policy or custom is evidenced by a recent New York Daily News article dated May 19, 2013, documenting rampant police

abuse where the officers involved were not disciplined in any meaningful manner but rather promoted to a higher position, see **Exhibit Two.**

AS AND FOR AN EIGHTHCAUSE OF ACTION

93. At all times mentioned, Plaintiff **WALLFORD GARCIA** was a resident of Bronx County, City and State of New York.

94. At all times mentioned, Defendant **CITY OF NEW YORK,** was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.

95. On or about the 12th day of December, 2012 and within ninety (90)days after the claim herein arose, the Plaintiff served a Notice of Claim in writing sworn to on their behalf upon the Defendant CITY OF NEW YORK, by delivering a copy thereof in duplicate to the officer designated to receive such process personally, which Notice of Claim advised the Defendant CITY OF NEW YORK, of the nature, place, time and manner in which the claim arose, the items of damage and injuries sustained so far as was then determinable.

96. At least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety (90) days after the happening of the event upon which the claims are based.

97. The Plaintiff has complied with the request of the municipal Defendant's for an oral examination pursuant to Section 50-H of the General Municipal Law

and/or the Public Authorities Law and/or no such request was made within the applicable period.

98. Upon information and belief, at all times mentioned, Defendants **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, **THE CITY OF NEW YORK.**

99. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants jointly and severally in their capacity as police officers, wrongfully touched, grabbed, handcuffed and seized the Plaintiff **WALLFORD GARCIA,** in an excessive manner about his person, causing him physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A NINTH CAUSE OF ACTION

100. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "99" with full force and effect as though set forth at length herein.

101. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally did place Plaintiff **WALLFORD GARCIA** in imminent fear of

physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A TENTH CAUSE OF ACTION

102. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "101" with full force and effect as though set forth at length herein.

103. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and unlawfully arrested the Plaintiff, restrained him and his liberty and then took him into custody to a police station in the County of the Bronx and there charged him with the crimes on Docket No. 2012BX021157. The Plaintiff was thereafter held in custody over the course of approximately three (3) days until he was released on his own recognizance. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR AN ELEVENTH CAUSE OF ACTION

104. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "103" with full force and effect as though set forth at length herein.

105. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any valid warrant, order or other legal process and without any legal right, wrongfully and unlawfully imprisoned the Plaintiff, restrained him and his liberty and then took him into custody and causing him to be incarcerated as a detainee in the City of New York's Correctional Facility. The Plaintiff was thereafter held in custody over the course of approximately three (3) days before he was released. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A TWELFTH CAUSE OF ACTION

106. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "105" with full force and effect as though set forth at length herein.

107. Upon information and belief, on or about April 7, 2012 and from that time until the dismissal of charges on or about September 25, 2012 which was a favorable termination for the accused by the Honorable Judge presiding at, Bronx County Supreme Court, Defendants **CITY OF NEW YORK, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** deliberately and maliciously prosecuted Plaintiff **WALLFORD GARCIA,** an innocent man without any probable cause whatsoever, by filing or causing a criminal court complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of

falsely accusing the plaintiff of violations of the criminal laws of the State of New York.

108. The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiff and due to the absence of probable cause malice can be inferred.

109. The commencement of these criminal proceedings under Docket No. 2012BX021157 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.

110. As a result of the malicious prosecution, Plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearances to defend his liberty against these unjust charges.

AS AND FOR A THIRTEENTH CAUSE OF ACTION

(This Cause of action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

111. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "110" as it set forth at length herein.

112. Defendants **DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996** were at all times relevant, duly appointed and acting officers of the City of New York Police Department.

113. At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

114. Plaintiff **WALLFORD GARCIA** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

115. The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.

116. On or about April 7, 2012, the Defendants, armed police, while effectuating the seizure of the Plaintiff **WALLFORD GARCIA**, did search, seize, assault and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

117. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

a. Freedom from assault to his person;

b. Freedom from battery to his person;

c. Freedom from illegal search and seizure;

d. Freedom from false arrest;

e. Freedom from malicious prosecution;

f. Freedom from the use of excessive force during the arrest process;

g. Freedom from unlawful imprisonment.

118. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

119. The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A FOURTEENTH CAUSE OF ACTION

120. Plaintiff incorporates, repeats and re-alleges all of the allegations contained in Paragraphs "1" through "119" with full force and effect as though set forth at length herein. (This Cause of Action applies to the City of New York and the officer sued in their official capacity should be characterized as a "Monell" claim.)

121. Defendant **CITY OF NEW YORK** and **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY.** has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.

122. **THE CITY OF NEW YORK** was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the

consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest a search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should not he used where a criminal defendant is not resisting arrest.

123. **THE CITY OF NEW YORK** is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:

1. Probable cause must be present before an individual such as the Plaintiff herein can he arrested.
2. Excessive force cannot be used against an individual who does not physically resist arrest.
3. An individual who sustains physical injury at the hands of the police during the arrest process should receive prompt medical attention.
4. Police cannot stop, seize or search individuals as the Plaintiff herein, when they merely see two denizens of the City of New York having a conversation, place their hands close to each other, consistent with greeting an individuals give each other, where no United States currency or another object has been exchanged for the item nor have the police seen whether the object supposedly passed from on e individual was an illegal object and when after the search and seizure no contraband is seen or taken from the person of the plaintiff.

124. The foregoing acts, omissions and systemic failures are customs and policies of the **CITY OF NEW YORK** which caused the police officers to falsely arrest, maliciously prosecute, seize illegally and search the Plaintiff commit an assault/battery to his person and denied his prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

125. Defendant **CITY OF NEW YORK** was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police Officer Defendants, knew or should have known of the bad disposition of said Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact that these officers were not suitable to be hired and employed by the **CITY OF NEW YORK** and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

126. To demonstrate a de facto policy of unconstitutional dimension, one might only look at the stop and frisk program initiated by Commissioner Raymond Kelly, who has been NYPD Commissioner for over ten (10) years.

127. Upon information and belief, on or before April 7, 2012, the City and Kelly had instituted a highly aggressive "Stop and Frisk" program or policy that was carried out by its police officer employees, including the named defendant officers.

128. In the decade since Kelly has been appointed Police Commissioner, the number of reported annual "street stops" rose from 97,000 in 2002 to 684,330

times in 2011. Upon information and belief, said rise is due to the policies, directives and procedures implemented or approved by the "City" and/or "Kelly".

129. Upon information and belief, as part of its Stop and Frisk Program, the City, Kelly and the NYPD, provide multiple levels of training that covered Stop and Frisk procedures. That includes, but is not limited to, a workshop on Stop and Frisk, videos about the law of reasonable suspicion, patrol guidelines, Operational memorandum and ongoing training after graduating from the Police Academy.

130. Upon information and belief, this program, hereinafter referred to as "Stop and Frisk", disproportionately targeted minorities, males and/or youths for stop, question and/or frisks, resulting in the excessive use of force disproportionately against minorities, and violated the constitutional rights of citizens of New York City, including citizens residing within the confines of Bronx County.

131. In the matter of David Floyd et al. v. City of New York at al. 283 FRD 153, United States District Court, Southern District of New York, Justice Scheindlin, stated that "it is indisputable that the NYPD has an enormous stop and frisk program. There were 2.8 million "documented" stops between 2004 and 2009. These stops were made pursuant to a policy that is designed, implemented and monitored by the NYPD administration" (Order Page 12).

132. Of the reported 1,121,470 stops, question and frisks "reported" in 2008 and 2009 alone, 37% or 416,350 were for individuals between the ages of 14 and 21 (according to the 2010 census this age range represents only 10% of the

City population). Thus, we submit that the defendant's stop and frisk policy us heavily and disproportionately focused on youths of New York City, especially minority youths.

133. Statistical evidence further shows that pursuant to the NYPD stop and frisk policies and procedures, a great majority of civilians who were subjected to stop, question and/or frisk had not committed any crime, and that the NYPD engaged in said actions without reasonable suspicions of criminality. Furthermore, statistics show that blacks and Latinos were disproportionately targeted for stops, summons, arrests and excessive use of force.

134. Upon information and belief, it was statistically revealed that of the reported stops and frisks conducted by the NYPD between 2004 and 2009, officers' "suspicions" of criminality was wrong nearly 9 out of 10 times.

135. Upon information and belief, the City, NYPD, and/or Kelly were long aware of the racial disparity of police stop and frisks. In 2007, the NYPD commissioned a study through The Rand Center on Quality Policing to study their stop, question and frisk patterns and practices. The study found that of the half a million persons stopped only 11% were Caucasians, 53% black and 219% Hispanic. Moreover, of the people that were stopped, 45% of Black and Hispanics that were stopped were frisked, while 29% of Caucasians that were stopped were frisked. Yet, when frisked, white suspects were 70% likelier than black suspects to have a weapon on them. (Rand study analysis of racial disparity in the New York Police Department Stop, Question and Frisk Practice, page xi)

136. The Rand report found that black pedestrians were stopped at a rate 50% greater than their representation in the residential census. RAND report page xi. The Rand report made several recommendations to the NYPD to "improve interactions between police and pedestrians during stops and to improve the accuracy of the data collected during pedestrian stops" (Rand page xv). Some of the many recommendations proposed include: review boroughs with the largest racial disparities in stop outcomes; record the reason(s) that the need to use force was used; monitor radio communications to make sure stop and frisk forms are being filled out; and identify, flag and investigate officers with out of the ordinary stop patterns. Finally, the report found "some correction in training during new officers' initial days on the street might be in order, particularly for any evaluation of Operation Impact practices" (Rand page xvi).

137. Upon information and belief, the defendants did not adopt these suggestions, and as of April 7, 2012, still continued to stop, frisk, search and use force on minorities in a disproportionate manner and target their stop and frisk polices in predominately non-white precincts within the City of New York.

138. Upon information and belief, police officers routinely engage in "stops" and then attempt to justify the stop and/or frisk, when in fact the basis for the stop or stop and frisk was pretextual and/or discriminatory in nature. Upon information and belief, frisks and/or searches are conducted without justifiable reasons.

139. According to a statistical analysis conducted by Colombia University Professor Jeffrey Fagan, submitted in the Floyd case, police cited (as a reason for stop and frisk) a "suspicious bulge" in 10.4% of all stops, yet a gun was found in .15% of all stops (or 1 out of every 69 persons stopped on suspicion of concealing a weapon). Furtive movements were cited as a reason in more than 50% of all stops.

140. Professor Fagan also statistically found that "NYPD stop and frisks are significantly more frequent for Black and Hispanic residents than they are for White residents, even when adjusting for local crime rates, racial composition of the local population....." Floyd at 29. He further statistically found that when stopped Blacks and Latinos are treated more harshly than Whites stopped on suspicion fo similar criminal activity. The term Black, White and Latinos are included within the NYPD reports and are adopted herein.

141. Analyzed date of the Stop and Frisk Program revealed in a report released by the Center for Constitutional Rights in 2012 found:

1) Analysis of the information recorded by police officers themselves in their stop and frisk reports indicates that more than 95,000 stops lacked reasonable, articulable suspicion and this violated the Fourth Amendment.

2) The NYPD continues to frequently and indiscriminately use the highly subjective and constitutionally questionable categories of "high crime area" and "furtive movements". "High crime area" is checked off in more than 60% of all stops. A comparison of actual crime rates to the claim that a stop was in a "high crime area" reveals that this factor was cited roughly the

same rate regardless of the crime rate. "Furtive movement" was also checked in a majority of stops, 53% of them. Here, too, there was no correlation between the frequency of this stated reason for a stop and actual crime rates. Both the frequency of these classifications and their complete absence of any relationship to actual crime rates suggest strongly that they are not legitimate indicators or reasonable, articulable suspicion.

3) Only 6% of stops result in arrest, an extraordinarily small number given that stops are legally supposed to be based on reasonable, articulable suspicion. The rates of seizure of weapons or contraband are minuscule - .12% of stops yield gun seizures and 1.8% contraband - and are lower than the seizure rates of random stops.

142. Since 2009 the number of Stop and Frisks has dramatically risen. In 2010, there were a reported 601,055 stops.

143. For the calendar year 2011, New York City precincts reported 685,724 "stops." Of that total number 350,743 were categorized as stops of persons of black descent and 223,650 were of Latino descent (this does not include the number of individuals who were not categorized and who may be of black or Latino descent). Thus, 83.7% of individuals stopped were categorized as "minorities." Of the 381,704 person frisked in 2011, 330,638 (89.2%) were black and Latinos and 27,341 (7.4%) were whites.

144. According to a 2010 census, blacks make up 25% of the City's population, Latinos 29% and whites 33%.

145. Statistical data also revealed that stop and frisk practices, when measured against the composition of the precinct population, was employed at a much

greater frequency in precincts whose population was composed predominantly of minorities. In 2011, the 73rd, 23rd, 81st, 41st and 25th precincts (Brownsville, East Harlem South, Bed Stuyvessant East, Hunts Point and East Harlem North) stopped 29.1%, 23.9%, 21.8%, 21.7% and 20.9% of their populations respectively. Meanwhile, in the Upper East Side (19th Pct.), Bensonhurst (62nd pct.), Bay Ridge (68th pct.), Totenville (123rd pct.) and Borough Park (66th pct.), each predominantly white precincts, residents were stopped at a rate of 2.5%, 2.4%, 2.3%, 2.1% and 2.0% of their populations. The same pattern holds true when the stops resulted in frisks. The top 5 precincts reporting the most number of frisks were minority populated precincts, such as the 75th, 73rd, 44th, 115th and 40th, while the least amount of frisks were conducted in white populated precincts such as the 94th, 18th, 123rdm 17th and 22nd.

146. Even in traditionally white neighborhoods, such as the 17th pct. (East Side, Manhattan), black and Latino residents are stopped at a disproportionate rate when compared to its white citizens who reside within the same pct. To illustrate the point, in 2011, 71.4% of all stops made in Kipps Bay/Murray Hill, NY, were made against blacks and Latinos. Yet, they account for only 7.8% of the total precinct population. In Greenwich Village, where blacks and Latinos comprise only 8% of the precinct, they accounted for 76.6% of all stops. (New York Civil Liberties Union Stop and Frisk 2011 Report) The same reports also cites the additional precincts engaging in the same practice: 19th, 123rd, 1st, 61st, 11th, 20th, 13th and 62nd.

147. It was further reported that at least one act of force was used in 148,079 "stops" (or in 21.5% of the total number of stops in 2011), with 76,483 reported the use of force against blacks, (21.8% of all stops of the 350,743 stops made against them in 2011). It should be noted that 51.7% of all "reported" instances of use of force by New York City Police were made against persons that the NYPD categorized as "black". In 2011, blacks and Latinos had force used against them 129,590 times as compared to white, 9,765 times.

148. To illustrate the prevalence of the use of force within the context of the "Stop and Frisk" program, it should be noted that the number of stops in which at least one act of force was "reported" as being used (148,079 times) exceeded the total number of summons (41,215) and arrests (40,883) made from reported "stops" in New York City in 2011 (total 82,098). Thus, it was 1.8 more times likely that force was used by police during a stop and frisk encounter than it was that said encounter resulted in an arrest or a summons being issued.

149. Upon information and belief, the City and Kelly and/or NYPD, either condoned the use of stop and frisk program, or the use of force in conjunction with it, as "means to an end", or acted with deliberate indifference to the knowledge that it was being utilized in that manner in a vast number of cases where there was no reasonable suspicion or no evidence of any criminality that would justify the use of any force, or force to the degree it was used, much less the initial stop and frisk.

150. The City, and/or Kelly sought to justify the tremendous increase in the stop and frisk program by claiming that the program helped rid the City of illegal guns. Yet, that contention or rationale is not statistically borne out. Nor would it serve as justification to violate the laws of the United States Constitution or the State of New York. In 2003, the NYPD conducted 160,851 stops and recovered 604 guns. In 2011, the NYPD conducted 685,724 stops, or an additional 524,873 stops when measured against 2003 statistics. Yet they only recovered and extra 176 more illegal guns as, or a total of 780. That computes to a .0003% success rate for the additional stops made.

151. Upon information and belief, the City and/or Kelly acted with deliberate indifference to: statistical evidence that enforcement or application of the "Stop and Frisk" program was highly unlikely to result in an arrest, a summons or the recovery of weapons or contraband. (Weapons were recovered in 1.14% of the total number of stops reported in 2011.)

152. In fact, the City and/or Kelly were deliberately indifferent to statistical evidence/reports/information/complaints and other information that they possessed that indicated that: the stop and frisk program was targeting minorities, targeting minority communities or precincts; evidence that the stop and frisk program was racially biased; the program was targeting youths; officers were using force, including unnecessary or excessive force on carrying out this program; the program was being unconstitutionally applied; the training police officers received was inadequate, and that there was a need for proper training in the academy, for supplemental training in service, and for in-field supervision and training in the laws of the 4th

Amendment, the legal use of force, for reasonable suspicion and general police guidelines and search and seizure laws and parameters.

153. Upon information and belief, the City and/or Kelly, acted with deliberate indifference that the aforementioned issues would, could and did result in the countless violations of constitutional rights of its citizenry.

154. Upon information and belief, prior to April 7, 2012, the City and/Kelly, failed to require that precinct commanders audit each officer worksheets, and failed to maintain or develop a system or methodology for identifying and tracking police officers who receive a baseline number of civilian complaints related to improper stops, improper frisks or searches, unnecessary or excessive use of force, threats, illegal entry into citizen's homes and/or discourtesy.

155. The stop and frisk program especially targeted minority youths in the 14-24 age range.

156. Although Blacks and Latinos males between the ages of 14 and 24 account for only 4.7% of the City's population, they accounted for 41.6% of all stops in 2011. White youths in the same age group account for 2% of the City's population and were responsible for only 3.8% of the total number of stops. In 2011, young black men between the ages of 14 and 24 were "reported" being stopped 168,126 times, which exceeded the total number of young black men in this age range who reside in New York City (158,406).

157. Minority youths were particularly vulnerable not only to stops, or stop and frisks, but more alarmingly to the use of force by the NYPD. As reported in Growing Up Police in the Age of Aggressive Police Policies, by Brett G.

Stoudt, Michelle Fine and Madeline Foz, in New York Law School Review, Volume 56, 2011/12, youths who were stopped during the two year period if 2008-2009 were frisked 61.3% of the time, they were arrested 5.4% of the time, issued summons 5.1% of the time and weapons were found on the youths 1.2% of the time (most if the weapons recovered were knives, guns comprised only 17% of the total weapons recovered). Yet, it was reported that force was used against the same youths 26.3% of the time, or approximately 2 ½ times more than the likelihood of being arrested or issued a summons. It was also found that reports of youths carrying a suspicious bulge or object, actions indicative of engaging in a violent crime, or an object in plain view 10.5%, 9.6% and 1.7% respectively, were highly unreliable and unlikely to lead to the recovery of an illicit gun. The total number reported (using the aforementioned criteria) of stop and frisks of youths were 90,756, yet the total illegal guns recovered (under any basis or criteria for reasonable suspicion) was 831 during that period, or .009%.

158. In all, 416,350 youths (381,578 or 91.6% were males and 218,260 of the total youths stopped (52.4%) were categorized as black or African American) were stopped during the 2008-2009 and 405,898 (97.5%) of them were free of weapons or contraband. Only 10% of the total youths stopped were white youths and only 7% female from 2008-2009.

159. Upon information and belief, the "stop and frisk" program: targeted or was applied, in a discriminatory manner against minorities; was applied or enforced in predominately minority communities; was age biased against youths, age 14-24; and was gender biased (against males) as well.

160. These youths were also subjected to the unnecessary use of force. Stodt, Fine and Fox further reported that of the 109,499 times that force was used against youths in 2008 and 2009, the police in 2,142 instances, (more than twice the number if times that any weapon was recovered) drew their firearm and/or pointed their firearm at a suspect. In the other 107,357 cases where force was reportedly used, it included hands on suspect, placing the suspect on the ground or against a wall/car, the use of a baton or pepper spray among other things.

161. The racial, gender and age disparity of these statistics could not and should not have been ignored.

162. Upon information and belief, the NYPD issued a Department Operations Order in 2002 prohibiting racial profiling. Nevertheless, upon information and belief, racial profiling continued to be utilized as a policing tool of the NYPD as of April 7, 2012. Moreover, there was no Operations Order or directive prohibiting any type of gender or age bias application of policing practices in place on that date.

163. Police Commissioner Kelly has stated that the Stop and Frisk Program, and the "stops" thereunder, serve as a deterrent to criminal activity, which includes the criminal possession of a weapon. Therefore, he endorsed, and upon information and belief, continues to endorse said program and have it applied by the police officers under his command, although said program was being used to stop and stop and frisk citizens without reasonable suspicion, and in a racially biased manner.

164. Upon information and belief, this Stop and Frisk program was in effect on April 7, 2012 and was trained, implemented and overseen throughout the City of New York and all precincts therein, including the NBBX by Det. Bryan Pitts and Det. Gena Jonas.

165. While the aforementioned statistics were compiled for all New York City precincts, the statistics are particularly alarming for the Bronx, where the plaintiff resides.

166. The most common reason used by the NYPD to justify stopping civilians of New York City, almost 90% of whom had committed no crime or violation, falls predominantly within the category "furtive movements." In 2011, that reason was given in 51.3% of the total number of stops.

167. However upon information and belief, the City and/or Kelly, either failed to train officers what constitutes "furtive movements", or acted with deliberate indifference to the need enhance or supplement training in the area; they acted with deliberate indifference to the unequal application of stop and frisk procedures when "furtive movements" are committed by "whites", not resulting in "stops", while the same movements when committed by minorities resulted in "stops"; and they acted deliberate indifference to the knowledge that "furtive movements" was not a statistically reliable marker of possession of contraband, weapon, or that a person has committed, or is about to commit a crime. In sum, "furtive movements" has been statistically proven to be unreliable to establish reasonable suspicion to justify a stop, or a stop, question and frisk.

168. The aforementioned statistical proof shows that said reasons or rationale for said stops were inaccurate, unreliable, untrue or without statistical probability of success.

169. Further evidence of the defendants' over aggressive stop and frisk policies which targeted minority communities, such as the Wakefield section of the Bronx, can be found in the Trespass Affidavit Program, formerly known as Operation Clean Halls. In Ligon v. City of New York, No. 12, Civ 2274, plaintiff brought an action alleging that the NYPD's trespass stops outside TAP buildings are often without reasonable suspicion, violating the 4th Amendment rights. Justice Scheinldin in a written decision filed January 8, 2013, agreed.

170. In her decision, Justice Scheindlin stated "while it may be difficult to say where, precisely to draw the line between a constitutional and unconstitutional police encounter, such a line exists, and the NYPD has systematically crossed it while making trespass stops outside TAP buildings in the Bronx." (Ligon page 10)

171. Although Bronx District Attorney Jeanette Rucker sent memos to NYPD Police Commanders and police officials expressing her concerns of the reasons police were providing for stopping innocent individuals outside Clean Hall building, her concerns were unheeded.

172. Dr. Fagan concluded that 63% of "the recorded trespass stops outside the Clean Halls building in the Bronx in 2011, where no indoor behavior was observed were not based on any articulated reasonable suspicion." (Ligon at 67)

173. Although Wallford Garcia's case does not involve a Clean Halls Building or fall within the TAP program, it does fall within the umbrella fo the defendants' over aggressive policing policies directed at minorities and at minority communities, and their failure to adequately train and supervise its officers in the laws and parameters set by the 4th Amendment. The actions taken by the officers on April 7, 2012 as will set forth herein, resulting in Wallford Garcia's constitutional violations, stems in large measure, from the policies, customs and procedures set by the defendants, including the stop and frisk program, the inadequate training and supervision of, and by its officers, and/or the pressures exerted by the City, NYPD and/or Kelly to meet performance standards measured by the number of arrests made and summons issued.

174. Upon information and belief, said Stop and Frisk program was established, maintained, supervised, continued, applied and monitored to meet arrest/summons, numbers/quotas and to establish and/or meet performance standards.

175. Upon information and belief, the NYPD, City and/or Kelly established performance standards which demanded, or resulted in increased levels of stops and frisks.

176. According to the 10/17/11 Police Officer Performance Objectives Operation Order, Commissioner Kelly directed all commands that "Department managers can and must set performance goals" relating to the "issuance of summons, the stopping and questioning of suspicious individuals, and the arrests of criminals."

177. The same Operation Order stated "uniformed members.....Who do not demonstrate activities...or who fail engage in proactive activities..will be evaluated accordingly and their assignments re-assessed."

178. In the Floyd case, Justice Scheindlin cited evidence of a quota system which included a minimum number of monthly "stops." Said evidence includes:

1) the deposition of Inspector Dwayne Montgomery, Commander of the 28th Precinct, who testified that he expected his officers to conduct a minimum of 2.3 stop and frisks per month and used that number "as a way of just gauging whether or not they were doing their job." Floyd at 20.

2) Police Officer Adhyl Polanco of the 41st Precinct testified that his commanding officers announced specific quotas for arrests and summons. He further testified that officers were threatened with reduced overtime or reassigned for failure to meet quotas.

3) Police Officer Adrian Schoolcraft recorded all roll calls at the 81st Precinct where supervisors were yelling and instructing officers to conduct unlawful stops and arrest to meet higher performance numbers. This order was coming down "the chain of command." The statements were made by Lt. Delafuents, Deputy Inspector Mauriello and Sgt. Stukes and cites the instructions of Chief of the Transportation Bureau of the City of New York Police Department, Michael Scagnelli.

4) Police Officer Luis Pichardo of the 28th Precinct offered testimony that his supervisors imposed a five summons per tour quota.

179. The acts of police officers who violate the civil and constitutional rights of the citizens of New York routinely go unreported by fellow police officers, not investigated by their superior officers, and consequently their acts, actions, omissions go unpunished. Failure to intervene and report is the norm, not the exception. In none of the case cited in paragraph 106 a-w above did the police officers intervene in the face of misconduct; nor did they report the misconduct of their fellow officers or receive any punishment for having failed to do so. Consequently, the acts of police officers in which they use excessive force, engage in racial profiling, making or file false arrests and reports, make warrantless entry into citizens' homes, etc., are condoned by other officers present, their supervisors, precinct commanders, including Assistant Chief Purtell and the NYPD Commissioner Kelly.

180. The City's and/or NYPD tolerance for brutality, excessive force, illegal and/or retaliatory arrests, and their emphasis to "come down hard on quality of life infractions", leads to a systemic practice and policy wherein City officials seem fairly tolerant, both outwardly and inwardly of police brutality, silence in the face of brutality and/or illegal stops, frisks, searches, seizures and/or arrests, warrantless entry into citizens' homes and engage in arrest quotas. A systemic practice where officers who report said misconduct are not viewed as "good cops", but rather as outcasts and snitches and are isolated, ostracized and often transferred, thereby perpetuating the illegal conduct of the officers.

181. Some instances where officers were treated as outcasts for reporting misconduct and/or an arrest/summons quota system are as follows:

a. the existence of arrest quotas, summons quotas and approval of illegal stops and arrests have been exposed by Police Officer Adrian Schoolcraft in a separate lawsuit which was cited by Justice Scheindlin, in David Floyd et al v. The City of New York, 08 Civ 1034.

b. Justice Scheindlin cited the deposition of Police Officer Adhyl Polanco of the 41st precinct, stating that commanding officers set specific quotas for arrests and summons and for stop and frisks (UF-250's), and threatened to reduce overtime for officers who failed to perform well and to reassign those who fail to meet quotas to less desirable posts.

c. According to secretly taped recorded conversations made by Schoolcraft, a Lieutenant, a Deputy Inspector and a Chief of the Division of Transportation all can be heard encouraging/demanding increased stops, summons, detentions and/or arrests.

d. Police Officer Craig Matthews of the 42nd precinct filed a lawsuit against the NYPD claiming the existence of a quota system and a systematic retaliation and harassment to those who did not comply.

e. Recently, retired Detective James Griffin, filed a lawsuit claiming that in the NYPD there exists a culture wherein officers who report corruption, face harassment and a hostile work environment and this conduct was tolerated by supervisors within the NYPD.

182. Upon information and belief, arrest quotas and summons quotas, often couched by the defendants as "performance standards", are ingrained as a part of a NYPD officer's job, leading to shortcuts and violations of citizen's constitutional rights to meet those so called performance levels.

183. In the matter of Dominguez v. City of New York, a lawsuit pending in Bronx Supreme Court under Index #305140-2011, a named defendant, Sgt. Karl Kindred of the Bronx Narcotics Division and a supervisor, stated under oath on April 19, 2013 at his deposition, see P. 32-37, **see Exhibit One,** that "all individuals who were merely present in an apartment would be arrested if it was pursuant to a search warrant", which clearly is not the law.

184. Further evidence of a pattern, policy or custom is evidenced by a recent New York Daily News article dated May 19, 2013, documenting rampant police abuse where the officers involved were not disciplined in any meaningful manner but rather promoted to a higher position, see **Exhibit Two.**

AS AND FOR A FIFTEENTH CAUSE OF ACTION

185. At all times mentioned, Plaintiff **DUDLEY CARTER** was a resident of Westchester County, City and State of New York.

186. At all times mentioned, Defendant **CITY OF NEW YORK,** was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.

187. On or about the 12th day of December, 2012 and within ninety (90)days after the claim herein arose, the Plaintiff served a Notice of Claim in writing sworn to on their behalf upon the Defendant CITY OF NEW YORK, by delivering a copy thereof in duplicate to the officer designated to receive

such process personally, which Notice of Claim advised the Defendant CITY OF NEW YORK, of the nature, place, time and manner in which the claim arose, the items of damage and injuries sustained so far as was then determinable.

188. At least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety (90) days after the happening of the event upon which the claims are based.

189. The Plaintiff has complied with the request of the municipal Defendant's for an oral examination pursuant to Section 50-H of the General Municipal Law and/or the Public Authorities Law and/or no such request was made within the applicable period.

190. Upon information and belief, at all times mentioned, Defendants **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, **THE CITY OF NEW YORK.**

191. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants jointly and severally in their capacity as police officers, wrongfully touched, grabbed, handcuffed and seized the Plaintiff **DUDLEY CARTER,** in an

excessive manner about his person, causing him physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A SIXTEENTH CAUSE OF ACTION

192. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "191" with full force and effect as though set forth at length herein.

193. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally did place Plaintiff **DUDLEY CARTER** in imminent fear of physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A SEVENTEENTH CAUSE OF ACTION

194. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "193" with full force and effect as though set forth at length herein.

195. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and unlawfully arrested the Plaintiff, restrained

him and his liberty and then took him into custody to a police station in the County of the Bronx and there charged him with the crimes on Docket No. 2012BX021155. The Plaintiff was thereafter held in custody over the course of approximately three (3) days until he was released on his own recognizance. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR AN EIGHTEENTH CAUSE OF ACTION

196. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "195" with full force and effect as though set forth at length herein.

197. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any valid warrant, order or other legal process and without any legal right, wrongfully and unlawfully imprisoned the Plaintiff, restrained him and his liberty and then took him into custody and causing him to be incarcerated as a detainee in the City of New York's Correctional Facility. The Plaintiff was thereafter held in custody over the course of approximately three (3) days before he was released. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A NINETEENTH CAUSE OF ACTION

198. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "197" with full force and effect as though set forth at length herein.

199. Upon information and belief, on or about April 7, 2012 and from that time until the dismissal of charges on or about September 25, 2012 which was a favorable termination for the accused by the Honorable Judge presiding at, Bronx County Supreme Court, Defendants **CITY OF NEW YORK, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** deliberately and maliciously prosecuted Plaintiff **DUDLEY CARTER,** an innocent man without any probable cause whatsoever, by filing or causing a criminal court complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of falsely accusing the plaintiff of violations of the criminal laws of the State of New York.

200. The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiff and due to the absence of probable cause malice can be inferred.

201. The commencement of these criminal proceedings under Docket No. 2012BX021155 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.

202. As a result of the malicious prosecution, Plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearances to defend his liberty against these unjust charges.

AS AND FOR A TWENTIETH CAUSE OF ACTION

(This Cause of action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

203. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "202" as it set forth at length herein.

204. Defendants **DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996** were at all times relevant, duly appointed and acting officers of the City of New York Police Department.

205 At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

206. Plaintiff **DUDLEY CARTER** is and at all times relevant herein, a citizen of the United States and a resident of Westchester County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

207. The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.

208. On or about April 7, 2012, the Defendants, armed police, while effectuating the seizure of the Plaintiff **DUDLEY CARTER**, did search, seize, assault and

commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

209. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

a. Freedom from assault to his person;

b. Freedom from battery to his person;

c. Freedom from illegal search and seizure;

d. Freedom from false arrest;

e. Freedom from malicious prosecution;

f. Freedom from the use of excessive force during the arrest process;

g. Freedom from unlawful imprisonment.

210. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

211. The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A TWNETY-FIRST CAUSE OF ACTION

212. Plaintiff incorporates, repeats and re-alleges all of the allegations contained in Paragraphs "1" through "211" with full force and effect as though set

forth at length herein. (This Cause of Action applies to the City of New York and the officer sued in their official capacity should be characterized as a "Monell" claim.)

213. Defendant **CITY OF NEW YORK** and **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY.** has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.

214. **THE CITY OF NEW YORK** was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest a search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should not he used where a criminal defendant is not resisting arrest.

215. **THE CITY OF NEW YORK** is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:

1. Probable cause must be present before an individual such as the Plaintiff herein can he arrested.

2. Excessive force cannot be used against an individual who does not physically resist arrest.

3. An individual who sustains physical injury at the hands of the police during the arrest process should receive prompt medical attention.

4. Police cannot stop, seize or search individuals as the Plaintiff herein, when they merely see two denizens of the City of New York having a conversation, place their hands close to each other, consistent with greeting an individuals give each other, where no United States currency or another object has been exchanged for the item nor have the police seen whether the object supposedly passed from on e individual was an illegal object and when after the search and seizure no contraband is seen or taken from the person of the plaintiff.

216. The foregoing acts, omissions and systemic failures are customs and policies of the **CITY OF NEW YORK** which caused the police officers to falsely arrest, maliciously prosecute, seize illegally and search the Plaintiff commit an assault/battery to his person and denied his prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

217. Defendant **CITY OF NEW YORK** was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police Officer Defendants, knew or should have known of the bad disposition of said Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact

that these officers were not suitable to be hired and employed by the **CITY OF NEW YORK** and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

218. To demonstrate a de facto policy of unconstitutional dimension, one might only look at the stop and frisk program initiated by Commissioner Raymond Kelly, who has been NYPD Commissioner for over ten (10) years.

219. Upon information and belief, on or before April 7, 2012, the City and Kelly had instituted a highly aggressive "Stop and Frisk" program or policy that was carried out by its police officer employees, including the named defendant officers.

220. In the decade since Kelly has been appointed Police Commissioner, the number of reported annual "street stops" rose from 97,000 in 2002 to 684,330 times in 2011. Upon information and belief, said rise is due to the policies, directives and procedures implemented or approved by the "City" and/or "Kelly".

221. Upon information and belief, as part of its Stop and Frisk Program, the City, Kelly and the NYPD, provide multiple levels of training that covered Stop and Frisk procedures. That includes, but is not limited to, a workshop on Stop and Frisk, videos about the law of reasonable suspicion, patrol guidelines, Operational memorandum and ongoing training after graduating from the Police Academy.

222. Upon information and belief, this program, hereinafter referred to as "Stop and Frisk", disproportionately targeted minorities, males and/or youths for

stop, question and/or frisks, resulting in the excessive use of force disproportionately against minorities, and violated the constitutional rights of citizens of New York City, including citizens residing within the confines of Bronx County.

223. In the matter of David Floyd et al. v. City of New York at al. 283 FRD 153, United States District Court, Southern District of New York, Justice Scheindlin, stated that "it is indisputable that the NYPD has an enormous stop and frisk program. There were 2.8 million "documented" stops between 2004 and 2009. These stops were made pursuant to a policy that is designed, implemented and monitored by the NYPD administration" (Order Page 12).

224. Of the reported 1,121,470 stops, question and frisks "reported" in 2008 and 2009 alone, 37% or 416,350 were for individuals between the ages of 14 and 21 (according to the 2010 census this age range represents only 10% of the City population). Thus, we submit that the defendant's stop and frisk policy us heavily and disproportionately focused on youths of New York City, especially minority youths.

225. Statistical evidence further shows that pursuant to the NYPD stop and frisk policies and procedures, a great majority of civilians who were subjected to stop, question and/or frisk had not committed any crime, and that the NYPD engaged in said actions without reasonable suspicions of criminality. Furthermore, statistics show that blacks and Latinos were disproportionately targeted for stops, summons, arrests and excessive use of force.

226. Upon information and belief, it was statistically revealed that of the reported

stops and frisks conducted by the NYPD between 2004 and 2009, officers' "suspicions" of criminality was wrong nearly 9 out of 10 times.

227. Upon information and belief, the City, NYPD, and/or Kelly were long aware of the racial disparity of police stop and frisks. In 2007, the NYPD commissioned a study through The Rand Center on Quality Policing to study their stop, question and frisk patterns and practices. The study found that of the half a million persons stopped only 11% were Caucasians, 53% black and 219% Hispanic. Moreover, of the people that were stopped, 45% of Black and Hispanics that were stopped were frisked, while 29% of Caucasians that were stopped were frisked. Yet, when frisked, white suspects were 70% likelier than black suspects to have a weapon on them. (Rand study analysis of racial disparity in the New York Police Department Stop, Question and Frisk Practice, page xi)

228. The Rand report found that black pedestrians were stopped at a rate 50% greater than their representation in the residential census. RAND report page xi. The Rand report made several recommendations to the NYPD to "improve interactions between police and pedestrians during stops and to improve the accuracy of the data collected during pedestrian stops" (Rand page xv). Some of the many recommendations proposed include: review boroughs with the largest racial disparities in stop outcomes; record the reason(s) that the need to use force was used; monitor radio communications to make sure stop and frisk forms are being filled out; and identify, flag and investigate officers with out of the ordinary stop patterns. Finally, the report found "some correction in training during new officers'

initial days on the street might be in order, particularly for any evaluation of Operation Impact practices" (Rand page xvi).

229. Upon information and belief, the defendants did not adopt these suggestions, and as of April 7, 2012, still continued to stop, frisk, search and use force on minorities in a disproportionate manner and target their stop and frisk polices in predominately non-white precincts within the City of New York.

230. Upon information and belief, police officers routinely engage in "stops" and then attempt to justify the stop and/or frisk, when in fact the basis for the stop or stop and frisk was pretextual and/or discriminatory in nature. Upon information and belief, frisks and/or searches are conducted without justifiable reasons.

231. According to a statistical analysis conducted by Colombia University Professor Jeffrey Fagan, submitted in the Floyd case, police cited (as a reason for stop and frisk) a "suspicious bulge" in 10.4% of all stops, yet a gun was found in .15% of all stops (or 1 out of every 69 persons stopped on suspicion of concealing a weapon). Furtive movements were cited as a reason in more than 50% of all stops.

232. Professor Fagan also statistically found that "NYPD stop and frisks are significantly more frequent for Black and Hispanic residents than they are for White residents, even when adjusting for local crime rates, racial composition of the local population....." Floyd at 29. He further statistically found that when stopped Blacks and Latinos are treated more harshly than Whites stopped on suspicion fo similar criminal activity. The term Black,

White and Latinos are included within the NYPD reports and are adopted herein.

233. Analyzed date of the Stop and Frisk Program revealed in a report released by the Center for Constitutional Rights in 2012 found:

1) Analysis of the information recorded by police officers themselves in their stop and frisk reports indicates that more than 95,000 stops lacked reasonable, articulable suspicion and this violated the Fourth Amendment.

2) The NYPD continues to frequently and indiscriminately use the highly subjective and constitutionally questionable categories of "high crime area" and "furtive movements". "High crime area" is checked off in more than 60% of all stops. A comparison of actual crime rates to the claim that a stop was in a "high crime area" reveals that this factor was cited roughly the same rate regardless of the crime rate. "Furtive movement" was also checked in a majority of stops, 53% of them. Here, too, there was no correlation between the frequency of this stated reason for a stop and actual crime rates. Both the frequency of these classifications and their complete absence of any relationship to actual crime rates suggest strongly that they are not legitimate indicators or reasonable, articulable suspicion.

3) Only 6% of stops result in arrest, an extraordinarily small number given that stops are legally supposed to be based on reasonable, articulable suspicion. The rates of seizure of weapons or contraband are minuscule - .12% of stops yield gun seizures and 1.8% contraband - and are lower than the seizure rates of random stops.

234. Since 2009 the number of Stop and Frisks has dramatically risen. In 2010, there were a reported 601,055 stops.

235. For the calendar year 2011, New York City precincts reported 685,724 "stops." Of that total number 350,743 were categorized as stops of persons of black descent and 223,650 were of Latino descent (this does not include the number of individuals who were not categorized and who may be of black or Latino descent). Thus, 83.7% of individuals stopped were categorized as "minorities." Of the 381,704 person frisked in 2011, 330,638 (89.2%) were black and Latinos and 27,341 (7.4%) were whites.

236. According to a 2010 census, blacks make up 25% of the City's population, Latinos 29% and whites 33%.

237. Statistical data also revealed that stop and frisk practices, when measured against the composition of the precinct population, was employed at a much greater frequency in precincts whose population was composed predominantly of minorities. In 2011, the 73rd, 23rd, 81st, 41st and 25th precincts (Brownsville, East Harlem South, Bed Stuyvessant East, Hunts Point and East Harlem North) stopped 29.1%, 23.9%, 21.8%, 21.7% and 20.9% of their populations respectively. Meanwhile, in the Upper East Side (19th Pct.), Bensonhurst (62nd pct.), Bay Ridge (68th pct.), Totenville (123rd pct.) and Borough Park (66th pct.), each predominantly white precincts, residents were stopped at a rate of 2.5%, 2.4%, 2.3%, 2.1% and 2.0% of their populations. The same pattern holds true when the stops resulted in frisks. The top 5 precincts reporting the most number of frisks were minority populated precincts, such as the 75th, 73rd, 44th, 115th and 40th, while the least

amount of frisks were conducted in white populated precincts such as the 94th, 18th, 123rdm 17th and 22nd.

238. Even in traditionally white neighborhoods, such as the 17th pct. (East Side, Manhattan), black and Latino residents are stopped at a disproportionate rate when compared to its white citizens who reside within the same pct. To illustrate the point, in 2011, 71.4% of all stops made in Kipps Bay/Murray Hill, NY, were made against blacks and Latinos. Yet, they account for only 7.8% of the total precinct population. In Greenwich Village, where blacks and Latinos comprise only 8% of the precinct, they accounted for 76.6% of all stops. (New York Civil Liberties Union Stop and Frisk 2011 Report) The same reports also cites the additional precincts engaging in the same practice: 19th, 123rd, 1st, 61st, 11th, 20th, 13th and 62nd.

239. It was further reported that at least one act of force was used in 148,079 "stops" (or in 21.5% of the total number of stops in 2011), with 76,483 reported the use of force against blacks, (21.8% of all stops of the 350,743 stops made against them in 2011). It should be noted that 51.7% of all "reported" instances of use of force by New York City Police were made against persons that the NYPD categorized as "black". In 2011, blacks and Latinos had force used against them 129,590 times as compared to white, 9,765 times.

240. To illustrate the prevalence of the use of force within the context of the "Stop and Frisk" program, it should be noted that the number of stops in which at least one act of force was "reported" as being used (148,079 times) exceeded the total number of summons (41,215) and arrests (40,883) made from

reported "stops" in New York City in 2011 (total 82,098). Thus, it was 1.8 more times likely that force was used by police during a stop and frisk encounter than it was that said encounter resulted in an arrest or a summons being issued.

241. Upon information and belief, the City and Kelly and/or NYPD, either condoned the use of stop and frisk program, or the use of force in conjunction with it, as "means to an end", or acted with deliberate indifference to the knowledge that it was being utilized in that manner in a vast number of cases where there was no reasonable suspicion or no evidence of any criminality that would justify the use of any force, or force to the degree it was used, much less the initial stop and frisk.

242. The City, and/or Kelly sought to justify the tremendous increase in the stop and frisk program by claiming that the program helped rid the City of illegal guns. Yet, that contention or rationale is not statistically borne out. Nor would it serve as justification to violate the laws of the United States Constitution or the State of New York. In 2003, the NYPD conducted 160,851 stops and recovered 604 guns. In 2011, the NYPD conducted 685,724 stops, or an additional 524,873 stops when measured against 2003 statistics. Yet they only recovered and extra 176 more illegal guns as, or a total of 780. That computes to a .0003% success rate for the additional stops made.

243. Upon information and belief, the City and/or Kelly acted with deliberate indifference to: statistical evidence that enforcement or application of the "Stop and Frisk" program was highly unlikely to result in an arrest, a

summons or the recovery of weapons or contraband. (Weapons were recovered in 1.14% of the total number of stops reported in 2011.)

244. In fact, the City and/or Kelly were deliberately indifferent to statistical evidence/reports/information/complaints and other information that they possessed that indicated that: the stop and frisk program was targeting minorities, targeting minority communities or precincts; evidence that the stop and frisk program was racially biased; the program was targeting youths; officers were using force, including unnecessary or excessive force on carrying out this program; the program was being unconstitutionally applied; the training police officers received was inadequate, and that there was a need for proper training in the academy, for supplemental training in service, and for in-field supervision and training in the laws of the 4th Amendment, the legal use of force, for reasonable suspicion and general police guidelines and search and seizure laws and parameters.

245. Upon information and belief, the City and/or Kelly, acted with deliberate indifference that the aforementioned issues would, could and did result in the countless violations of constitutional rights of its citizenry.

246. Upon information and belief, prior to April 7, 2012, the City and/Kelly, failed to require that precinct commanders audit each officer worksheets, and failed to maintain or develop a system or methodology for identifying and tracking police officers who receive a baseline number of civilian complaints related to improper stops, improper frisks or searches, unnecessary or excessive use of force, threats, illegal entry into citizen's homes and/or discourtesy.

247. The stop and frisk program especially targeted minority youths in the 14-24 age range.

248. Although Blacks and Latinos males between the ages of 14 and 24 account for only 4.7% of the City's population, they accounted for 41.6% of all stops in 2011. White youths in the same age group account for 2% of the City's population and were responsible for only 3.8% of the total number of stops. In 2011, young black men between the ages of 14 and 24 were "reported" being stopped 168,126 times, which exceeded the total number of young black men in this age range who reside in New York City (158,406).

249. Minority youths were particularly vulnerable not only to stops, or stop and frisks, but more alarmingly to the use of force by the NYPD. As reported in Growing Up Police in the Age of Aggressive Police Policies, by Brett G. Stoudt, Michelle Fine and Madeline Foz, in New York Law School Review, Volume 56, 2011/12, youths who were stopped during the two year period if 2008-2009 were frisked 61.3% of the time, they were arrested 5.4% of the time, issued summons 5.1% of the time and weapons were found on the youths 1.2% of the time (most if the weapons recovered were knives, guns comprised only 17% of the total weapons recovered). Yet, it was reported that force was used against the same youths 26.3% of the time, or approximately 2 ½ times more than the likelihood of being arrested or issued a summons. It was also found that reports of youths carrying a suspicious bulge or object, actions indicative of engaging in a violent crime, or an object in plain view 10.5%, 9.6% and 1.7% respectively, were highly unreliable and unlikely to lead to the recovery of an illicit gun. The total

number reported (using the aforementioned criteria) of stop and frisks of youths were 90,756, yet the total illegal guns recovered (under any basis or criteria for reasonable suspicion) was 831 during that period, or .009%.

250. In all, 416,350 youths (381,578 or 91.6% were males and 218,260 of the total youths stopped (52.4%) were categorized as black or African American) were stopped during the 2008-2009 and 405,898 (97.5%) of them were free of weapons or contraband. Only 10% of the total youths stopped were white youths and only 7% female from 2008-2009.

251. Upon information and belief, the "stop and frisk" program: targeted or was applied, in a discriminatory manner against minorities; was applied or enforced in predominately minority communities; was age biased against youths, age 14-24; and was gender biased (against males) as well.

252. These youths were also subjected to the unnecessary use of force. Stodt, Fine and Fox further reported that of the 109,499 times that force was used against youths in 2008 and 2009, the police in 2,142 instances, (more than twice the number if times that any weapon was recovered) drew their firearm and/or pointed their firearm at a suspect. In the other 107,357 cases where force was reportedly used, it included hands on suspect, placing the suspect on the ground or against a wall/car, the use of a baton or pepper spray among other things.

253. The racial, gender and age disparity of these statistics could not and should not have been ignored.

254. Upon information and belief, the NYPD issued a Department Operations Order in 2002 prohibiting racial profiling. Nevertheless, upon information

and belief, racial profiling continued to be utilized as a policing tool of the NYPD as of April 7, 2012. Moreover, there was no Operations Order or directive prohibiting any type of gender or age bias application of policing practices in place on that date.

255. Police Commissioner Kelly has stated that the Stop and Frisk Program, and the "stops" thereunder, serve as a deterrent to criminal activity, which includes the criminal possession of a weapon. Therefore, he endorsed, and upon information and belief, continues to endorse said program and have it applied by the police officers under his command, although said program was being used to stop and stop and frisk citizens without reasonable suspicion, and in a racially biased manner.

256. Upon information and belief, this Stop and Frisk program was in effect on April 7, 2012 and was trained, implemented and overseen throughout the City of New York and all precincts therein, including the NBBX by Det. Bryan Pitts and Det. Gena Jonas.

257. While the aforementioned statistics were compiled for all New York City precincts, the statistics are particularly alarming for the Bronx, where the plaintiff resides.

258. The most common reason used by the NYPD to justify stopping civilians of New York City, almost 90% of whom had committed no crime or violation, falls predominantly within the category "furtive movements." In 2011, that reason was given in 51.3% of the total number of stops.

259. However upon information and belief, the City and/or Kelly, either failed to train officers what constitutes "furtive movements", or acted with deliberate

indifference to the need enhance or supplement training in the area; they acted with deliberate indifference to the unequal application of stop and frisk procedures when "furtive movements" are committed by "whites", not resulting in "stops", while the same movements when committed by minorities resulted in "stops"; and they acted deliberate indifference to the knowledge that "furtive movements" was not a statistically reliable marker of possession of contraband, weapon, or that a person has committed, or is about to commit a crime. In sum, "furtive movements" has been statistically proven to be unreliable to establish reasonable suspicion to justify a stop, or a stop, question and frisk.

260. The aforementioned statistical proof shows that said reasons or rationale for said stops were inaccurate, unreliable, untrue or without statistical probability of success.

261. Further evidence of the defendants' over aggressive stop and frisk policies which targeted minority communities, such as the Wakefield section of the Bronx, can be found in the Trespass Affidavit Program, formerly known as Operation Clean Halls. In Ligon v. City of New York, No. 12, Civ 2274, plaintiff brought an action alleging that the NYPD's trespass stops outside TAP buildings are often without reasonable suspicion, violating the 4th Amendment rights. Justice Scheinldin in a written decision filed January 8, 2013, agreed.

262. In her decision, Justice Scheindlin stated "while it may be difficult to say where, precisely to draw the line between a constitutional and unconstitutional police encounter, such a line exists, and the NYPD has

systematically crossed it while making trespass stops outside TAP buildings in the Bronx." (Ligon page 10)

263. Although Bronx District Attorney Jeanette Rucker sent memos to NYPD Police Commanders and police officials expressing her concerns of the reasons police were providing for stopping innocent individuals outside Clean Hall building, her concerns were unheeded.

264. Dr. Fagan concluded that 63% of "the recorded trespass stops outside the Clean Halls building in the Bronx in 2011, where no indoor behavior was observed were not based on any articulated reasonable suspicion." (Ligon at 67)

265. Although Dudley Carter's case does not involve a Clean Halls Building or fall within the TAP program, it does fall within the umbrella fo the defendants' over aggressive policing policies directed at minorities and at minority communities, and their failure to adequately train and supervise its officers in the laws and parameters set by the 4th Amendment. The actions taken by the officers on April 7, 2012 as will set forth herein, resulting in Dudley Carter's constitutional violations, stems in large measure, from the policies, customs and procedures set by the defendants, including the stop and frisk program, the inadequate training and supervision of, and by its officers, and/or the pressures exerted by the City, NYPD and/or Kelly to meet performance standards measured by the number of arrests made and summons issued.

266. Upon information and belief, said Stop and Frisk program was established, maintained, supervised, continued, applied and monitored to meet

arrest/summons, numbers/quotas and to establish and/or meet performance standards.

267. Upon information and belief, the NYPD, City and/or Kelly established performance standards which demanded, or resulted in increased levels of stops and frisks.

268. According to the 10/17/11 Police Officer Performance Objectives Operation Order, Commissioner Kelly directed all commands that "Department managers can and must set performance goals" relating to the "issuance of summons, the stopping and questioning of suspicious individuals, and the arrests of criminals."

269. The same Operation Order stated "uniformed members.....Who do not demonstrate activities...or who fail engage in proactive activities..will be evaluated accordingly and their assignments re-assessed."

270. In the Floyd case, Justice Scheindlin cited evidence of a quota system which included a minimum number of monthly "stops." Said evidence includes:

1) the deposition of Inspector Dwayne Montgomery, Commander of the 28th Precinct, who testified that he expected his officers to conduct a minimum of 2.3 stop and frisks per month and used that number "as a way of just gauging whether or not they were doing their job." Floyd at 20.

2) Police Officer Adhyl Polanco of the 41st Precinct testified that his commanding officers announced specific quotas for arrests and summons. He further testified that officers were threatened with reduced overtime or reassigned for failure to meet quotas.

3) Police Officer Adrian Schoolcraft recorded all roll calls at the 81st Precinct where supervisors were yelling and instructing officers to conduct unlawful stops and arrest to meet higher performance numbers. This order was coming down "the chain of command." The statements were made by Lt. Delafuents, Deputy Inspector Mauriello and Sgt. Stukes and cites the instructions of Chief of the Transportation Bureau of the City of New York Police Department, Michael Scagnelli.

4) Police Officer Luis Pichardo of the 28th Precinct offered testimony that his supervisors imposed a five summons per tour quota.

271. The acts of police officers who violate the civil and constitutional rights of the citizens of New York routinely go unreported by fellow police officers, not investigated by their superior officers, and consequently their acts, actions, omissions go unpunished. Failure to intervene and report is the norm, not the exception. In none of the case cited in paragraph 106 a-w above did the police officers intervene in the face of misconduct; nor did they report the misconduct of their fellow officers or receive any punishment for having failed to do so. Consequently, the acts of police officers in which they use excessive force, engage in racial profiling, making or file false arrests and reports, make warrantless entry into citizens' homes, etc., are condoned by other officers present, their supervisors, precinct commanders, including Assistant Chief Purtell and the NYPD Commissioner Kelly.

272. The City's and/or NYPD tolerance for brutality, excessive force, illegal and/or retaliatory arrests, and their emphasis to "come down hard on quality of life infractions", leads to a systemic practice and policy wherein City officials seem fairly tolerant, both outwardly and inwardly of police brutality, silence in the face of brutality and/or illegal stops, frisks, searches, seizures and/or arrests, warrantless entry into citizens' homes and engage in arrest quotas. A systemic practice where officers who report said misconduct are not viewed as "good cops", but rather as outcasts and snitches and are isolated, ostracized and often transferred, thereby perpetuating the illegal conduct of the officers.

273. Some instances where officers were treated as outcasts for reporting misconduct and/or an arrest/summons quota system are as follows:

a. the existence of arrest quotas, summons quotas and approval of illegal stops and arrests have been exposed by Police Officer Adrian Schoolcraft in a separate lawsuit which was cited by Justice Scheindlin, in David Floyd et al v. The City of New York, 08 Civ 1034.

b. Justice Scheindlin cited the deposition of Police Officer Adhyl Polanco of the 41st precinct, stating that commanding officers set specific quotas for arrests and summons and for stop and frisks (UF-250's), and threatened to reduce overtime for officers who failed to perform well and to reassign those who fail to meet quotas to less desirable posts.

c. According to secretly taped recorded conversations made by Schoolcraft, a Lieutenant, a Deputy Inspector and a Chief of the Division of Transportation all can be heard encouraging/demanding increased stops, summons, detentions and/or arrests.

d. Police Officer Craig Matthews of the 42nd precinct filed a lawsuit against the NYPD claiming the existence of a quota system and a systematic retaliation and harassment to those who did not comply.

e. Recently, retired Detective James Griffin, filed a lawsuit claiming that in the NYPD there exists a culture wherein officers who report corruption, face harassment and a hostile work environment and this conduct was tolerated by supervisors within the NYPD.

274. Upon information and belief, arrest quotas and summons quotas, often couched by the defendants as "performance standards", are ingrained as a part of a NYPD officer's job, leading to shortcuts and violations of citizen's constitutional rights to meet those so called performance levels.

275. In the matter of Dominguez v. City of New York, a lawsuit pending in Bronx Supreme Court under Index #305140-2011, a named defendant, Sgt. Karl Kindred of the Bronx Narcotics Division and a supervisor, stated under oath on April 19, 2013 at his deposition, see P. 32-37, see **Exhibit One**, that "all individuals who were merely present in an apartment would be arrested if it was pursuant to a search warrant", which clearly is not the law.

276. Further evidence of a pattern, policy or custom is evidenced by a recent New York Daily News article dated May 19, 2013, documenting rampant police

abuse where the officers involved were not disciplined in any meaningful manner but rather promoted to a higher position, see **Exhibit Two.**

AS AND FOR A TWENTY SECOND CAUSE OF ACTION

277. At all times mentioned, Plaintiff **ANDRE WALTERS** was a resident of Bronx County, City and State of New York.

278. At all times mentioned, Defendant **CITY OF NEW YORK,** was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.

279. On or about the 12th day of December, 2012 and within ninety (90)days after the claim herein arose, the Plaintiff served a Notice of Claim in writing sworn to on their behalf upon the Defendant CITY OF NEW YORK, by delivering a copy thereof in duplicate to the officer designated to receive such process personally, which Notice of Claim advised the Defendant CITY OF NEW YORK, of the nature, place, time and manner in which the claim arose, the items of damage and injuries sustained so far as was then determinable.

280. At least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety (90) days after the happening of the event upon which the claims are based.

281. The Plaintiff has complied with the request of the municipal Defendant's for an oral examination pursuant to Section 50-H of the General Municipal Law

and/or the Public Authorities Law and/or no such request was made within the applicable period.

282. Upon information and belief, at all times mentioned, Defendants **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, **THE CITY OF NEW YORK.**

283. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants jointly and severally in their capacity as police officers, wrongfully touched, grabbed, handcuffed and seized the Plaintiff **ANDRE WALTERS,** in an excessive manner about his person, causing him physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A TWENTY THIRD CAUSE OF ACTION

284. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "283" with full force and effect as though set forth at length herein.

285. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally did place Plaintiff **ANDRE WALTERS** in imminent fear of

physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A TWENTY FOURTH CAUSE OF ACTION

286. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "9" with full force and effect as though set forth at length herein.

287. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and unlawfully arrested the Plaintiff, restrained him and his liberty and then took him into custody to a police station in the County of the Bronx and there charged him with the crimes on Docket No. 2012BX021164. The Plaintiff was thereafter held in custody over the course of approximately three (3) days until he was released on his own recognizance. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A TWENTY FIFTH CAUSE OF ACTION

288. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "287" with full force and effect as though set forth at length herein.

289. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any valid warrant, order or other legal process and without any legal right, wrongfully and unlawfully imprisoned the Plaintiff, restrained him and his liberty and then took him into custody and causing him to be incarcerated as a detainee in the City of New York's Correctional Facility. The Plaintiff was thereafter held in custody over the course of approximately three (3) days before he was released. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A TWENTY SIXTH CAUSE OF ACTION

290. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "289" with full force and effect as though set forth at length herein.

291. Upon information and belief, on or about April 7, 2012 and from that time until the dismissal of charges on or about September 25, 2012 which was a favorable termination for the accused by the Honorable Judge presiding at, Bronx County Supreme Court, Defendants **CITY OF NEW YORK, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** deliberately and maliciously prosecuted Plaintiff **ANDRE WALTERS,** an innocent man without any probable cause whatsoever, by filing or causing a criminal court complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of

falsely accusing the plaintiff of violations of the criminal laws of the State of New York.

292. The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiff and due to the absence of probable cause malice can be inferred.

293. The commencement of these criminal proceedings under Docket No. 2012BX021164 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.

294. As a result of the malicious prosecution, Plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearances to defend his liberty against these unjust charges.

AS AND FOR A TWENTY SEVENTH CAUSE OF ACTION

(This Cause of action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

295. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "294" as it set forth at length herein.

296. Defendants **DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996** were at all times relevant, duly appointed and acting officers of the City of New York Police Department.

297. At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

298. Plaintiff **ANDRE WALTERS** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

299. The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.

300. On or about April 7, 2012, the Defendants, armed police, while effectuating the seizure of the Plaintiff **ANDRE WALTERS**, did search, seize, assault and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

301. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

a. Freedom from assault to his person;

b. Freedom from battery to his person;

c. Freedom from illegal search and seizure;

d. Freedom from false arrest;

e. Freedom from malicious prosecution;

f. Freedom from the use of excessive force during the arrest process;

g. Freedom from unlawful imprisonment.

302. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

303. The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A TWENTY-EIGHTHCAUSE OF ACTION

304. Plaintiff incorporates, repeats and re-alleges all of the allegations contained in Paragraphs "1" through "303" with full force and effect as though set forth at length herein. (This Cause of Action applies to the City of New York and the officer sued in their official capacity should be characterized as a "Monell" claim.)

305. Defendant **CITY OF NEW YORK** and **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY.** has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.

306. **THE CITY OF NEW YORK** was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the

consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest a search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should not he used where a criminal defendant is not resisting arrest.

307. **THE CITY OF NEW YORK** is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:

1. Probable cause must be present before an individual such as the Plaintiff herein can he arrested.
2. Excessive force cannot be used against an individual who does not physically resist arrest.
3. An individual who sustains physical injury at the hands of the police during the arrest process should receive prompt medical attention.
4. Police cannot stop, seize or search individuals as the Plaintiff herein, when they merely see two denizens of the City of New York having a conversation, place their hands close to each other, consistent with greeting an individuals give each other, where no United States currency or another object has been exchanged for the item nor have the police seen whether the object supposedly passed from on e individual was an illegal object and when after the search and seizure no contraband is seen or taken from the person of the plaintiff.

308. The foregoing acts, omissions and systemic failures are customs and policies of the **CITY OF NEW YORK** which caused the police officers to falsely arrest, maliciously prosecute, seize illegally and search the Plaintiff commit an assault/battery to his person and denied his prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

309. Defendant **CITY OF NEW YORK** was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police Officer Defendants, knew or should have known of the bad disposition of said Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact that these officers were not suitable to be hired and employed by the **CITY OF NEW YORK** and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

310. To demonstrate a de facto policy of unconstitutional dimension, one might only look at the stop and frisk program initiated by Commissioner Raymond Kelly, who has been NYPD Commissioner for over ten (10) years.

311. Upon information and belief, on or before April 7, 2012, the City and Kelly had instituted a highly aggressive "Stop and Frisk" program or policy that was carried out by its police officer employees, including the named defendant officers.

312. In the decade since Kelly has been appointed Police Commissioner, the number of reported annual "street stops" rose from 97,000 in 2002 to 684,330

times in 2011. Upon information and belief, said rise is due to the policies, directives and procedures implemented or approved by the "City" and/or "Kelly".

313. Upon information and belief, as part of its Stop and Frisk Program, the City, Kelly and the NYPD, provide multiple levels of training that covered Stop and Frisk procedures. That includes, but is not limited to, a workshop on Stop and Frisk, videos about the law of reasonable suspicion, patrol guidelines, Operational memorandum and ongoing training after graduating from the Police Academy.

314. Upon information and belief, this program, hereinafter referred to as "Stop and Frisk", disproportionately targeted minorities, males and/or youths for stop, question and/or frisks, resulting in the excessive use of force disproportionately against minorities, and violated the constitutional rights of citizens of New York City, including citizens residing within the confines of Bronx County.

315. In the matter of David Floyd et al. v. City of New York at al. 283 FRD 153, United States District Court, Southern District of New York, Justice Scheindlin, stated that "it is indisputable that the NYPD has an enormous stop and frisk program. There were 2.8 million "documented" stops between 2004 and 2009. These stops were made pursuant to a policy that is designed, implemented and monitored by the NYPD administration" (Order Page 12).

316. Of the reported 1,121,470 stops, question and frisks "reported" in 2008 and 2009 alone, 37% or 416,350 were for individuals between the ages of 14 and 21 (according to the 2010 census this age range represents only 10% of the

City population). Thus, we submit that the defendant's stop and frisk policy us heavily and disproportionately focused on youths of New York City, especially minority youths.

317. Statistical evidence further shows that pursuant to the NYPD stop and frisk policies and procedures, a great majority of civilians who were subjected to stop, question and/or frisk had not committed any crime, and that the NYPD engaged in said actions without reasonable suspicions of criminality. Furthermore, statistics show that blacks and Latinos were disproportionately targeted for stops, summons, arrests and excessive use of force.

318. Upon information and belief, it was statistically revealed that of the reported stops and frisks conducted by the NYPD between 2004 and 2009, officers' "suspicions" of criminality was wrong nearly 9 out of 10 times.

319. Upon information and belief, the City, NYPD, and/or Kelly were long aware of the racial disparity of police stop and frisks. In 2007, the NYPD commissioned a study through The Rand Center on Quality Policing to study their stop, question and frisk patterns and practices. The study found that of the half a million persons stopped only 11% were Caucasians, 53% black and 219% Hispanic. Moreover, of the people that were stopped, 45% of Black and Hispanics that were stopped were frisked, while 29% of Caucasians that were stopped were frisked. Yet, when frisked, white suspects were 70% likelier than black suspects to have a weapon on them. (Rand study analysis of racial disparity in the New York Police Department Stop, Question and Frisk Practice, page xi)

320. The Rand report found that black pedestrians were stopped at a rate 50% greater than their representation in the residential census. RAND report page xi. The Rand report made several recommendations to the NYPD to "improve interactions between police and pedestrians during stops and to improve the accuracy of the data collected during pedestrian stops" (Rand page xv). Some of the many recommendations proposed include: review boroughs with the largest racial disparities in stop outcomes; record the reason(s) that the need to use force was used; monitor radio communications to make sure stop and frisk forms are being filled out; and identify, flag and investigate officers with out of the ordinary stop patterns. Finally, the report found "some correction in training during new officers' initial days on the street might be in order, particularly for any evaluation of Operation Impact practices" (Rand page xvi).

321. Upon information and belief, the defendants did not adopt these suggestions, and as of April 7, 2012, still continued to stop, frisk, search and use force on minorities in a disproportionate manner and target their stop and frisk polices in predominately non-white precincts within the City of New York.

322. Upon information and belief, police officers routinely engage in "stops" and then attempt to justify the stop and/or frisk, when in fact the basis for the stop or stop and frisk was pretextual and/or discriminatory in nature. Upon information and belief, frisks and/or searches are conducted without justifiable reasons.

323. According to a statistical analysis conducted by Colombia University Professor Jeffrey Fagan, submitted in the Floyd case, police cited (as a reason for stop and frisk) a "suspicious bulge" in 10.4% of all stops, yet a gun was found in .15% of all stops (or 1 out of every 69 persons stopped on suspicion of concealing a weapon). Furtive movements were cited as a reason in more than 50% of all stops.

324. Professor Fagan also statistically found that "NYPD stop and frisks are significantly more frequent for Black and Hispanic residents than they are for White residents, even when adjusting for local crime rates, racial composition of the local population....." Floyd at 29. He further statistically found that when stopped Blacks and Latinos are treated more harshly than Whites stopped on suspicion fo similar criminal activity. The term Black, White and Latinos are included within the NYPD reports and are adopted herein.

325. Analyzed date of the Stop and Frisk Program revealed in a report released by the Center for Constitutional Rights in 2012 found:

1) Analysis of the information recorded by police officers themselves in their stop and frisk reports indicates that more than 95,000 stops lacked reasonable, articulable suspicion and this violated the Fourth Amendment.

2) The NYPD continues to frequently and indiscriminately use the highly subjective and constitutionally questionable categories of "high crime area" and "furtive movements". "High crime area" is checked off in more than 60% of all stops. A comparison of actual crime rates to the claim that a stop was in a "high crime area" reveals that this factor was cited roughly the

same rate regardless of the crime rate. "Furtive movement" was also checked in a majority of stops, 53% of them. Here, too, there was no correlation between the frequency of this stated reason for a stop and actual crime rates. Both the frequency of these classifications and their complete absence of any relationship to actual crime rates suggest strongly that they are not legitimate indicators or reasonable, articulable suspicion.

3) Only 6% of stops result in arrest, an extraordinarily small number given that stops are legally supposed to be based on reasonable, articulable suspicion. The rates of seizure of weapons or contraband are minuscule - .12% of stops yield gun seizures and 1.8% contraband - and are lower than the seizure rates of random stops.

326. Since 2009 the number of Stop and Frisks has dramatically risen. In 2010, there were a reported 601,055 stops.

327. For the calendar year 2011, New York City precincts reported 685,724 "stops." Of that total number 350,743 were categorized as stops of persons of black descent and 223,650 were of Latino descent (this does not include the number of individuals who were not categorized and who may be of black or Latino descent). Thus, 83.7% of individuals stopped were categorized as "minorities." Of the 381,704 person frisked in 2011, 330,638 (89.2%) were black and Latinos and 27,341 (7.4%) were whites.

328. According to a 2010 census, blacks make up 25% of the City's population, Latinos 29% and whites 33%.

329. Statistical data also revealed that stop and frisk practices, when measured against the composition of the precinct population, was employed at a much

greater frequency in precincts whose population was composed predominantly of minorities. In 2011, the 73rd, 23rd, 81st, 41st and 25th precincts (Brownsville, East Harlem South, Bed Stuyvessant East, Hunts Point and East Harlem North) stopped 29.1%, 23.9%, 21.8%, 21.7% and 20.9% of their populations respectively. Meanwhile, in the Upper East Side (19th Pct.), Bensonhurst (62nd pct.), Bay Ridge (68th pct.), Totenville (123rd pct.) and Borough Park (66th pct.), each predominantly white precincts, residents were stopped at a rate of 2.5%, 2.4%, 2.3%, 2.1% and 2.0% of their populations. The same pattern holds true when the stops resulted in frisks. The top 5 precincts reporting the most number of frisks were minority populated precincts, such as the 75th, 73rd, 44th, 115th and 40th, while the least amount of frisks were conducted in white populated precincts such as the 94th, 18th, 123rdm 17th and 22nd.

330. Even in traditionally white neighborhoods, such as the 17th pct. (East Side, Manhattan), black and Latino residents are stopped at a disproportionate rate when compared to its white citizens who reside within the same pct. To illustrate the point, in 2011, 71.4% of all stops made in Kipps Bay/Murray Hill, NY, were made against blacks and Latinos. Yet, they account for only 7.8% of the total precinct population. In Greenwich Village, where blacks and Latinos comprise only 8% of the precinct, they accounted for 76.6% of all stops. (New York Civil Liberties Union Stop and Frisk 2011 Report) The same reports also cites the additional precincts engaging in the same practice: 19th, 123rd, 1st, 61st, 11th, 20th, 13th and 62nd.

331. It was further reported that at least one act of force was used in 148,079 "stops" (or in 21.5% of the total number of stops in 2011), with 76,483 reported the use of force against blacks, (21.8% of all stops of the 350,743 stops made against them in 2011). It should be noted that 51.7% of all "reported" instances of use of force by New York City Police were made against persons that the NYPD categorized as "black". In 2011, blacks and Latinos had force used against them 129,590 times as compared to white, 9,765 times.

332. To illustrate the prevalence of the use of force within the context of the "Stop and Frisk" program, it should be noted that the number of stops in which at least one act of force was "reported" as being used (148,079 times) exceeded the total number of summons (41,215) and arrests (40,883) made from reported "stops" in New York City in 2011 (total 82,098). Thus, it was 1.8 more times likely that force was used by police during a stop and frisk encounter than it was that said encounter resulted in an arrest or a summons being issued.

333. Upon information and belief, the City and Kelly and/or NYPD, either condoned the use of stop and frisk program, or the use of force in conjunction with it, as "means to an end", or acted with deliberate indifference to the knowledge that it was being utilized in that manner in a vast number of cases where there was no reasonable suspicion or no evidence of any criminality that would justify the use of any force, or force to the degree it was used, much less the initial stop and frisk.

334. The City, and/or Kelly sought to justify the tremendous increase in the stop and frisk program by claiming that the program helped rid the City of illegal guns. Yet, that contention or rationale is not statistically borne out. Nor would it serve as justification to violate the laws of the United States Constitution or the State of New York. In 2003, the NYPD conducted 160,851 stops and recovered 604 guns. In 2011, the NYPD conducted 685,724 stops, or an additional 524,873 stops when measured against 2003 statistics. Yet they only recovered and extra 176 more illegal guns as, or a total of 780. That computes to a .0003% success rate for the additional stops made.

335. Upon information and belief, the City and/or Kelly acted with deliberate indifference to: statistical evidence that enforcement or application of the "Stop and Frisk" program was highly unlikely to result in an arrest, a summons or the recovery of weapons or contraband. (Weapons were recovered in 1.14% of the total number of stops reported in 2011.)

336. In fact, the City and/or Kelly were deliberately indifferent to statistical evidence/reports/information/complaints and other information that they possessed that indicated that: the stop and frisk program was targeting minorities, targeting minority communities or precincts; evidence that the stop and frisk program was racially biased; the program was targeting youths; officers were using force, including unnecessary or excessive force on carrying out this program; the program was being unconstitutionally applied; the training police officers received was inadequate, and that there was a need for proper training in the academy, for supplemental training in service, and for in-field supervision and training in the laws of the 4th

Amendment, the legal use of force, for reasonable suspicion and general police guidelines and search and seizure laws and parameters.

337. Upon information and belief, the City and/or Kelly, acted with deliberate indifference that the aforementioned issues would, could and did result in the countless violations of constitutional rights of its citizenry.

338. Upon information and belief, prior to April 7, 2012, the City and/Kelly, failed to require that precinct commanders audit each officer worksheets, and failed to maintain or develop a system or methodology for identifying and tracking police officers who receive a baseline number of civilian complaints related to improper stops, improper frisks or searches, unnecessary or excessive use of force, threats, illegal entry into citizen's homes and/or discourtesy.

339. The stop and frisk program especially targeted minority youths in the 14-24 age range.

340. Although Blacks and Latinos males between the ages of 14 and 24 account for only 4.7% of the City's population, they accounted for 41.6% of all stops in 2011. White youths in the same age group account for 2% of the City's population and were responsible for only 3.8% of the total number of stops. In 2011, young black men between the ages of 14 and 24 were "reported" being stopped 168,126 times, which exceeded the total number of young black men in this age range who reside in New York City (158,406).

341. Minority youths were particularly vulnerable not only to stops, or stop and frisks, but more alarmingly to the use of force by the NYPD. As reported in Growing Up Police in the Age of Aggressive Police Policies, by Brett G.

Stoudt, Michelle Fine and Madeline Foz, in New York Law School Review, Volume 56, 2011/12, youths who were stopped during the two year period if 2008-2009 were frisked 61.3% of the time, they were arrested 5.4% of the time, issued summons 5.1% of the time and weapons were found on the youths 1.2% of the time (most if the weapons recovered were knives, guns comprised only 17% of the total weapons recovered). Yet, it was reported that force was used against the same youths 26.3% of the time, or approximately 2 ½ times more than the likelihood of being arrested or issued a summons. It was also found that reports of youths carrying a suspicious bulge or object, actions indicative of engaging in a violent crime, or an object in plain view 10.5%, 9.6% and 1.7% respectively, were highly unreliable and unlikely to lead to the recovery of an illicit gun. The total number reported (using the aforementioned criteria) of stop and frisks of youths were 90,756, yet the total illegal guns recovered (under any basis or criteria for reasonable suspicion) was 831 during that period, or .009%.

342. In all, 416,350 youths (381,578 or 91.6% were males and 218,260 of the total youths stopped (52.4%) were categorized as black or African American) were stopped during the 2008-2009 and 405,898 (97.5%) of them were free of weapons or contraband. Only 10% of the total youths stopped were white youths and only 7% female from 2008-2009.

343. Upon information and belief, the "stop and frisk" program: targeted or was applied, in a discriminatory manner against minorities; was applied or enforced in predominately minority communities; was age biased against youths, age 14-24; and was gender biased (against males) as well.

344. These youths were also subjected to the unnecessary use of force. Stodt, Fine and Fox further reported that of the 109,499 times that force was used against youths in 2008 and 2009, the police in 2,142 instances, (more than twice the number if times that any weapon was recovered) drew their firearm and/or pointed their firearm at a suspect. In the other 107,357 cases where force was reportedly used, it included hands on suspect, placing the suspect on the ground or against a wall/car, the use of a baton or pepper spray among other things.

345. The racial, gender and age disparity of these statistics could not and should not have been ignored.

346. Upon information and belief, the NYPD issued a Department Operations Order in 2002 prohibiting racial profiling. Nevertheless, upon information and belief, racial profiling continued to be utilized as a policing tool of the NYPD as of April 7, 2012. Moreover, there was no Operations Order or directive prohibiting any type of gender or age bias application of policing practices in place on that date.

347. Police Commissioner Kelly has stated that the Stop and Frisk Program, and the "stops" thereunder, serve as a deterrent to criminal activity, which includes the criminal possession of a weapon. Therefore, he endorsed, and upon information and belief, continues to endorse said program and have it applied by the police officers under his command, although said program was being used to stop and stop and frisk citizens without reasonable suspicion, and in a racially biased manner.

348. Upon information and belief, this Stop and Frisk program was in effect on April 7, 2012 and was trained, implemented and overseen throughout the City of New York and all precincts therein, including the NBBX by Det. Bryan Pitts and Det. Gena Jonas.

349. While the aforementioned statistics were compiled for all New York City precincts, the statistics are particularly alarming for the Bronx, where the plaintiff resides.

350. The most common reason used by the NYPD to justify stopping civilians of New York City, almost 90% of whom had committed no crime or violation, falls predominantly within the category "furtive movements." In 2011, that reason was given in 51.3% of the total number of stops.

351. However upon information and belief, the City and/or Kelly, either failed to train officers what constitutes "furtive movements", or acted with deliberate indifference to the need enhance or supplement training in the area; they acted with deliberate indifference to the unequal application of stop and frisk procedures when "furtive movements" are committed by "whites", not resulting in "stops", while the same movements when committed by minorities resulted in "stops"; and they acted deliberate indifference to the knowledge that "furtive movements" was not a statistically reliable marker of possession of contraband, weapon, or that a person has committed, or is about to commit a crime. In sum, "furtive movements" has been statistically proven to be unreliable to establish reasonable suspicion to justify a stop, or a stop, question and frisk.

352. The aforementioned statistical proof shows that said reasons or rationale for said stops were inaccurate, unreliable, untrue or without statistical probability of success.

353. Further evidence of the defendants' over aggressive stop and frisk policies which targeted minority communities, such as the Wakefield section of the Bronx, can be found in the Trespass Affidavit Program, formerly known as Operation Clean Halls. In Ligon v. City of New York, No. 12, Civ 2274, plaintiff brought an action alleging that the NYPD's trespass stops outside TAP buildings are often without reasonable suspicion, violating the 4th Amendment rights. Justice Scheinldin in a written decision filed January 8, 2013, agreed.

354. In her decision, Justice Scheindlin stated "while it may be difficult to say where, precisely to draw the line between a constitutional and unconstitutional police encounter, such a line exists, and the NYPD has systematically crossed it while making trespass stops outside TAP buildings in the Bronx." (Ligon page 10)

355. Although Bronx District Attorney Jeanette Rucker sent memos to NYPD Police Commanders and police officials expressing her concerns of the reasons police were providing for stopping innocent individuals outside Clean Hall building, her concerns were unheeded.

356. Dr. Fagan concluded that 63% of "the recorded trespass stops outside the Clean Halls building in the Bronx in 2011, where no indoor behavior was observed were not based on any articulated reasonable suspicion." (Ligon at 67)

357. Although Andre Walters' case does not involve a Clean Halls Building or fall within the TAP program, it does fall within the umbrella fo the defendants' over aggressive policing policies directed at minorities and at minority communities, and their failure to adequately train and supervise its officers in the laws and parameters set by the 4th Amendment. The actions taken by the officers on April 7, 2012 as will set forth herein, resulting in Andre Walters' constitutional violations, stems in large measure, from the policies, customs and procedures set by the defendants, including the stop and frisk program, the inadequate training and supervision of, and by its officers, and/or the pressures exerted by the City, NYPD and/or Kelly to meet performance standards measured by the number of arrests made and summons issued.

358. Upon information and belief, said Stop and Frisk program was established, maintained, supervised, continued, applied and monitored to meet arrest/summons, numbers/quotas and to establish and/or meet performance standards.

359. Upon information and belief, the NYPD, City and/or Kelly established performance standards which demanded, or resulted in increased levels of stops and frisks.

360. According to the 10/17/11 Police Officer Performance Objectives Operation Order, Commissioner Kelly directed all commands that "Department managers can and must set performance goals" relating to the "issuance of summons, the stopping and questioning of suspicious individuals, and the arrests of criminals."

361. The same Operation Order stated "uniformed members.....Who do not demonstrate activities...or who fail engage in proactive activities..will be evaluated accordingly and their assignments re-assessed."

362. In the Floyd case, Justice Scheindlin cited evidence of a quota system which included a minimum number of monthly "stops." Said evidence includes:

1) the deposition of Inspector Dwayne Montgomery, Commander of the 28th Precinct, who testified that he expected his officers to conduct a minimum of 2.3 stop and frisks per month and used that number "as a way of just gauging whether or not they were doing their job." Floyd at 20.

2) Police Officer Adhyl Polanco of the 41st Precinct testified that his commanding officers announced specific quotas for arrests and summons. He further testified that officers were threatened with reduced overtime or reassigned for failure to meet quotas.

3) Police Officer Adrian Schoolcraft recorded all roll calls at the 81st Precinct where supervisors were yelling and instructing officers to conduct unlawful stops and arrest to meet higher performance numbers. This order was coming down "the chain of command." The statements were made by Lt. Delafuents, Deputy Inspector Mauriello and Sgt. Stukes and cites the instructions of Chief of the Transportation Bureau of the City of New York Police Department, Michael Scagnelli.

4) Police Officer Luis Pichardo of the 28th Precinct offered testimony that his supervisors imposed a five summons per tour quota.

363. The acts of police officers who violate the civil and constitutional rights of the citizens of New York routinely go unreported by fellow police officers, not investigated by their superior officers, and consequently their acts, actions, omissions go unpunished. Failure to intervene and report is the norm, not the exception. In none of the case cited in paragraph 106 a-w above did the police officers intervene in the face of misconduct; nor did they report the misconduct of their fellow officers or receive any punishment for having failed to do so. Consequently, the acts of police officers in which they use excessive force, engage in racial profiling, making or file false arrests and reports, make warrantless entry into citizens' homes, etc., are condoned by other officers present, their supervisors, precinct commanders, including Assistant Chief Purtell and the NYPD Commissioner Kelly.

364. The City's and/or NYPD tolerance for brutality, excessive force, illegal and/or retaliatory arrests, and their emphasis to "come down hard on quality of life infractions", leads to a systemic practice and policy wherein City officials seem fairly tolerant, both outwardly and inwardly of police brutality, silence in the face of brutality and/or illegal stops, frisks, searches, seizures and/or arrests, warrantless entry into citizens' homes and engage in arrest quotas. A systemic practice where officers who report said misconduct are not viewed as "good cops", but rather as outcasts and snitches and are isolated, ostracized and often transferred, thereby perpetuating the illegal conduct of the officers.

365. Some instances where officers were treated as outcasts for reporting misconduct and/or an arrest/summons quota system are as follows:

a. the existence of arrest quotas, summons quotas and approval of illegal stops and arrests have been exposed by Police Officer Adrian Schoolcraft in a separate lawsuit which was cited by Justice Scheindlin, in David Floyd et al v. The City of New York, 08 Civ 1034.

b. Justice Scheindlin cited the deposition of Police Officer Adhyl Polanco of the 41st precinct, stating that commanding officers set specific quotas for arrests and summons and for stop and frisks (UF-250's), and threatened to reduce overtime for officers who failed to perform well and to reassign those who fail to meet quotas to less desirable posts.

c. According to secretly taped recorded conversations made by Schoolcraft, a Lieutenant, a Deputy Inspector and a Chief of the Division of Transportation all can be heard encouraging/demanding increased stops, summons, detentions and/or arrests.

d. Police Officer Craig Matthews of the 42nd precinct filed a lawsuit against the NYPD claiming the existence of a quota system and a systematic retaliation and harassment to those who did not comply.

e. Recently, retired Detective James Griffin, filed a lawsuit claiming that in the NYPD there exists a culture wherein officers who report corruption, face harassment and a hostile work environment and this conduct was tolerated by supervisors within the NYPD.

366. Upon information and belief, arrest quotas and summons quotas, often couched by the defendants as "performance standards", are ingrained as a part of a NYPD officer's job, leading to shortcuts and violations of citizen's constitutional rights to meet those so called performance levels.

367. In the matter of Dominguez v. City of New York, a lawsuit pending in Bronx Supreme Court under Index #305140-2011, a named defendant, Sgt. Karl Kindred of the Bronx Narcotics Division and a supervisor, stated under oath on April 19, 2013 at his deposition, see P. 32-37, see **Exhibit One**, that "all individuals who were merely present in an apartment would be arrested if it was pursuant to a search warrant", which clearly is not the law.

368. Further evidence of a pattern, policy or custom is evidenced by a recent New York Daily News article dated May 19, 2013, documenting rampant police abuse where the officers involved were not disciplined in any meaningful manner but rather promoted to a higher position, see **Exhibit Two.**

AS AND FOR A TWENTY-NINTH CAUSE OF ACTION

369. At all times mentioned, Plaintiff **DERRICK MOULTON** was a resident of Bronx County, City and State of New York.

370. At all times mentioned, Defendant **CITY OF NEW YORK,** was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.

371. On or about the 12th day of December, 2012 and within ninety (90)days after the claim herein arose, the Plaintiff served a Notice of Claim in writing sworn to on their behalf upon the Defendant CITY OF NEW YORK, by delivering a copy thereof in duplicate to the officer designated to receive

such process personally, which Notice of Claim advised the Defendant CITY OF NEW YORK, of the nature, place, time and manner in which the claim arose, the items of damage and injuries sustained so far as was then determinable.

372. At least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety (90) days after the happening of the event upon which the claims are based.

373. The Plaintiff has complied with the request of the municipal Defendant's for an oral examination pursuant to Section 50-H of the General Municipal Law and/or the Public Authorities Law and/or no such request was made within the applicable period.

374. Upon information and belief, at all times mentioned, Defendants **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, **THE CITY OF NEW YORK.**

375. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants jointly and severally in their capacity as police officers, wrongfully touched, grabbed, handcuffed and seized the Plaintiff **DERRICK MOULTON,** in an

excessive manner about his person, causing him physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A THIRTIETH CAUSE OF ACTION

376. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "375" with full force and effect as though set forth at length herein.

377. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally did place Plaintiff **DERRICK MOULTON** in imminent fear of physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A THIRTY-FIRST CAUSE OF ACTION

378. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "9" with full force and effect as though set forth at length herein.

379. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and unlawfully arrested the Plaintiff, restrained

him and his liberty and then took him into custody to a police station in the County of the Bronx and there charged him with the crimes on Docket No. 2012BX021163. The Plaintiff was thereafter held in custody over the course of approximately three (3) days until he was released on his own recognizance. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A THIRTY-SECOND CAUSE OF ACTION

380. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "379" with full force and effect as though set forth at length herein.

381. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any valid warrant, order or other legal process and without any legal right, wrongfully and unlawfully imprisoned the Plaintiff, restrained him and his liberty and then took him into custody and causing him to be incarcerated as a detainee in the City of New York's Correctional Facility. The Plaintiff was thereafter held in custody over the course of approximately three (3) days before he was released. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A THIRTY-THIRD CAUSE OF ACTION

382. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "381" with full force and effect as though set forth at length herein.

383. Upon information and belief, on or about April 7, 2012 and from that time until the dismissal of charges on or about September 25, 2012 which was a favorable termination for the accused by the Honorable Judge presiding at, Bronx County Supreme Court, Defendants **CITY OF NEW YORK, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** deliberately and maliciously prosecuted Plaintiff **DERRICK MOULTON,** an innocent man without any probable cause whatsoever, by filing or causing a criminal court complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of falsely accusing the plaintiff of violations of the criminal laws of the State of New York.

384. The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiff and due to the absence of probable cause malice can be inferred.

385. The commencement of these criminal proceedings under Docket No. 2012BX021163 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.

386. As a result of the malicious prosecution, Plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearances to defend his liberty against these unjust charges.

AS AND FOR A THIRTY-FOURTH CAUSE OF ACTION

(This Cause of action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

387. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "386" as it set forth at length herein.

388. Defendants **DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996** were at all times relevant, duly appointed and acting officers of the City of New York Police Department.

389. At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

390. Plaintiff **SIDIKI ANDERSON** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

391. The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.

392. On or about April 7, 2012, the Defendants, armed police, while effectuating the seizure of the Plaintiff **DERRICK MOULTON**, did search, seize, assault

and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

393. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

a. Freedom from assault to his person;

b. Freedom from battery to his person;

c. Freedom from illegal search and seizure;

d. Freedom from false arrest;

e. Freedom from malicious prosecution;

f. Freedom from the use of excessive force during the arrest process;

g. Freedom from unlawful imprisonment.

394. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

395. The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A THIRTY-FIFTH CAUSE OF ACTION

396. Plaintiff incorporates, repeats and re-alleges all of the allegations contained in Paragraphs "1" through "395" with full force and effect as though set

forth at length herein. (This Cause of Action applies to the City of New York and the officer sued in their official capacity should be characterized as a "Monell" claim.)

397. Defendant **CITY OF NEW YORK** and **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY.** has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.

398. **THE CITY OF NEW YORK** was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest a search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should not he used where a criminal defendant is not resisting arrest.

399. **THE CITY OF NEW YORK** is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:

1. Probable cause must be present before an individual such as the Plaintiff herein can he arrested.

2. Excessive force cannot be used against an individual who does not physically resist arrest.

3. An individual who sustains physical injury at the hands of the police during the arrest process should receive prompt medical attention.

4. Police cannot stop, seize or search individuals as the Plaintiff herein, when they merely see two denizens of the City of New York having a conversation, place their hands close to each other, consistent with greeting an individuals give each other, where no United States currency or another object has been exchanged for the item nor have the police seen whether the object supposedly passed from on e individual was an illegal object and when after the search and seizure no contraband is seen or taken from the person of the plaintiff.

400. The foregoing acts, omissions and systemic failures are customs and policies of the **CITY OF NEW YORK** which caused the police officers to falsely arrest, maliciously prosecute, seize illegally and search the Plaintiff commit an assault/battery to his person and denied his prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

401. Defendant **CITY OF NEW YORK** was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police Officer Defendants, knew or should have known of the bad disposition of said Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact

that these officers were not suitable to be hired and employed by the **CITY OF NEW YORK** and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

402. To demonstrate a de facto policy of unconstitutional dimension, one might only look at the stop and frisk program initiated by Commissioner Raymond Kelly, who has been NYPD Commissioner for over ten (10) years.

403. Upon information and belief, on or before April 7, 2012, the City and Kelly had instituted a highly aggressive "Stop and Frisk" program or policy that was carried out by its police officer employees, including the named defendant officers.

404. In the decade since Kelly has been appointed Police Commissioner, the number of reported annual "street stops" rose from 97,000 in 2002 to 684,330 times in 2011. Upon information and belief, said rise is due to the policies, directives and procedures implemented or approved by the "City" and/or "Kelly".

405. Upon information and belief, as part of its Stop and Frisk Program, the City, Kelly and the NYPD, provide multiple levels of training that covered Stop and Frisk procedures. That includes, but is not limited to, a workshop on Stop and Frisk, videos about the law of reasonable suspicion, patrol guidelines, Operational memorandum and ongoing training after graduating from the Police Academy.

406. Upon information and belief, this program, hereinafter referred to as "Stop and Frisk", disproportionately targeted minorities, males and/or youths for

stop, question and/or frisks, resulting in the excessive use of force disproportionately against minorities, and violated the constitutional rights of citizens of New York City, including citizens residing within the confines of Bronx County.

407. In the matter of David Floyd et al. v. City of New York at al. 283 FRD 153, United States District Court, Southern District of New York, Justice Scheindlin, stated that "it is indisputable that the NYPD has an enormous stop and frisk program. There were 2.8 million "documented" stops between 2004 and 2009. These stops were made pursuant to a policy that is designed, implemented and monitored by the NYPD administration" (Order Page 12).

408. Of the reported 1,121,470 stops, question and frisks "reported" in 2008 and 2009 alone, 37% or 416,350 were for individuals between the ages of 14 and 21 (according to the 2010 census this age range represents only 10% of the City population). Thus, we submit that the defendant's stop and frisk policy us heavily and disproportionately focused on youths of New York City, especially minority youths.

409. Statistical evidence further shows that pursuant to the NYPD stop and frisk policies and procedures, a great majority of civilians who were subjected to stop, question and/or frisk had not committed any crime, and that the NYPD engaged in said actions without reasonable suspicions of criminality. Furthermore, statistics show that blacks and Latinos were disproportionately targeted for stops, summons, arrests and excessive use of force.

410. Upon information and belief, it was statistically revealed that of the reported

stops and frisks conducted by the NYPD between 2004 and 2009, officers' "suspicions" of criminality was wrong nearly 9 out of 10 times.

411. Upon information and belief, the City, NYPD, and/or Kelly were long aware of the racial disparity of police stop and frisks. In 2007, the NYPD commissioned a study through The Rand Center on Quality Policing to study their stop, question and frisk patterns and practices. The study found that of the half a million persons stopped only 11% were Caucasians, 53% black and 219% Hispanic. Moreover, of the people that were stopped, 45% of Black and Hispanics that were stopped were frisked, while 29% of Caucasians that were stopped were frisked. Yet, when frisked, white suspects were 70% likelier than black suspects to have a weapon on them. (Rand study analysis of racial disparity in the New York Police Department Stop, Question and Frisk Practice, page xi)

412. The Rand report found that black pedestrians were stopped at a rate 50% greater than their representation in the residential census. RAND report page xi. The Rand report made several recommendations to the NYPD to "improve interactions between police and pedestrians during stops and to improve the accuracy of the data collected during pedestrian stops" (Rand page xv). Some of the many recommendations proposed include: review boroughs with the largest racial disparities in stop outcomes; record the reason(s) that the need to use force was used; monitor radio communications to make sure stop and frisk forms are being filled out; and identify, flag and investigate officers with out of the ordinary stop patterns. Finally, the report found "some correction in training during new officers'

initial days on the street might be in order, particularly for any evaluation of Operation Impact practices" (Rand page xvi).

413. Upon information and belief, the defendants did not adopt these suggestions, and as of April 7, 2012, still continued to stop, frisk, search and use force on minorities in a disproportionate manner and target their stop and frisk polices in predominately non-white precincts within the City of New York.

414. Upon information and belief, police officers routinely engage in "stops" and then attempt to justify the stop and/or frisk, when in fact the basis for the stop or stop and frisk was pretextual and/or discriminatory in nature. Upon information and belief, frisks and/or searches are conducted without justifiable reasons.

415. According to a statistical analysis conducted by Colombia University Professor Jeffrey Fagan, submitted in the Floyd case, police cited (as a reason for stop and frisk) a "suspicious bulge" in 10.4% of all stops, yet a gun was found in .15% of all stops (or 1 out of every 69 persons stopped on suspicion of concealing a weapon). Furtive movements were cited as a reason in more than 50% of all stops.

416. Professor Fagan also statistically found that "NYPD stop and frisks are significantly more frequent for Black and Hispanic residents than they are for White residents, even when adjusting for local crime rates, racial composition of the local population....." Floyd at 29. He further statistically found that when stopped Blacks and Latinos are treated more harshly than Whites stopped on suspicion fo similar criminal activity. The term Black,

White and Latinos are included within the NYPD reports and are adopted herein.

417. Analyzed date of the Stop and Frisk Program revealed in a report released by the Center for Constitutional Rights in 2012 found:

1) Analysis of the information recorded by police officers themselves in their stop and frisk reports indicates that more than 95,000 stops lacked reasonable, articulable suspicion and this violated the Fourth Amendment.

2) The NYPD continues to frequently and indiscriminately use the highly subjective and constitutionally questionable categories of "high crime area" and "furtive movements". "High crime area" is checked off in more than 60% of all stops. A comparison of actual crime rates to the claim that a stop was in a "high crime area" reveals that this factor was cited roughly the same rate regardless of the crime rate. "Furtive movement" was also checked in a majority of stops, 53% of them. Here, too, there was no correlation between the frequency of this stated reason for a stop and actual crime rates. Both the frequency of these classifications and their complete absence of any relationship to actual crime rates suggest strongly that they are not legitimate indicators or reasonable, articulable suspicion.

3) Only 6% of stops result in arrest, an extraordinarily small number given that stops are legally supposed to be based on reasonable, articulable suspicion. The rates of seizure of weapons or contraband are minuscule - .12% of stops yield gun seizures and 1.8% contraband - and are lower than the seizure rates of random stops.

418. Since 2009 the number of Stop and Frisks has dramatically risen. In 2010, there were a reported 601,055 stops.

419. For the calendar year 2011, New York City precincts reported 685,724 "stops." Of that total number 350,743 were categorized as stops of persons of black descent and 223,650 were of Latino descent (this does not include the number of individuals who were not categorized and who may be of black or Latino descent). Thus, 83.7% of individuals stopped were categorized as "minorities." Of the 381,704 person frisked in 2011, 330,638 (89.2%) were black and Latinos and 27,341 (7.4%) were whites.

420. According to a 2010 census, blacks make up 25% of the City's population, Latinos 29% and whites 33%.

421. Statistical data also revealed that stop and frisk practices, when measured against the composition of the precinct population, was employed at a much greater frequency in precincts whose population was composed predominantly of minorities. In 2011, the 73rd, 23rd, 81st, 41st and 25th precincts (Brownsville, East Harlem South, Bed Stuyvessant East, Hunts Point and East Harlem North) stopped 29.1%, 23.9%, 21.8%, 21.7% and 20.9% of their populations respectively. Meanwhile, in the Upper East Side (19th Pct.), Bensonhurst (62nd pct.), Bay Ridge (68th pct.), Totenville (123rd pct.) and Borough Park (66th pct.), each predominantly white precincts, residents were stopped at a rate of 2.5%, 2.4%, 2.3%, 2.1% and 2.0% of their populations. The same pattern holds true when the stops resulted in frisks. The top 5 precincts reporting the most number of frisks were minority populated precincts, such as the 75th, 73rd, 44th, 115th and 40th, while the least

amount of frisks were conducted in white populated precincts such as the 94th, 18th, 123rdm 17th and 22nd.

422. Even in traditionally white neighborhoods, such as the 17th pct. (East Side, Manhattan), black and Latino residents are stopped at a disproportionate rate when compared to its white citizens who reside within the same pct. To illustrate the point, in 2011, 71.4% of all stops made in Kipps Bay/Murray Hill, NY, were made against blacks and Latinos. Yet, they account for only 7.8% of the total precinct population. In Greenwich Village, where blacks and Latinos comprise only 8% of the precinct, they accounted for 76.6% of all stops. (New York Civil Liberties Union Stop and Frisk 2011 Report) The same reports also cites the additional precincts engaging in the same practice: 19th, 123rd, 1st, 61st, 11th, 20th, 13th and 62nd.

423. It was further reported that at least one act of force was used in 148,079 "stops" (or in 21.5% of the total number of stops in 2011), with 76,483 reported the use of force against blacks, (21.8% of all stops of the 350,743 stops made against them in 2011). It should be noted that 51.7% of all "reported" instances of use of force by New York City Police were made against persons that the NYPD categorized as "black". In 2011, blacks and Latinos had force used against them 129,590 times as compared to white, 9,765 times.

424. To illustrate the prevalence of the use of force within the context of the "Stop and Frisk" program, it should be noted that the number of stops in which at least one act of force was "reported" as being used (148,079 times) exceeded the total number of summons (41,215) and arrests (40,883) made from

reported "stops" in New York City in 2011 (total 82,098). Thus, it was 1.8 more times likely that force was used by police during a stop and frisk encounter than it was that said encounter resulted in an arrest or a summons being issued.

425. Upon information and belief, the City and Kelly and/or NYPD, either condoned the use of stop and frisk program, or the use of force in conjunction with it, as "means to an end", or acted with deliberate indifference to the knowledge that it was being utilized in that manner in a vast number of cases where there was no reasonable suspicion or no evidence of any criminality that would justify the use of any force, or force to the degree it was used, much less the initial stop and frisk.

426. The City, and/or Kelly sought to justify the tremendous increase in the stop and frisk program by claiming that the program helped rid the City of illegal guns. Yet, that contention or rationale is not statistically borne out. Nor would it serve as justification to violate the laws of the United States Constitution or the State of New York. In 2003, the NYPD conducted 160,851 stops and recovered 604 guns. In 2011, the NYPD conducted 685,724 stops, or an additional 524,873 stops when measured against 2003 statistics. Yet they only recovered and extra 176 more illegal guns as, or a total of 780. That computes to a .0003% success rate for the additional stops made.

427. Upon information and belief, the City and/or Kelly acted with deliberate indifference to: statistical evidence that enforcement or application of the "Stop and Frisk" program was highly unlikely to result in an arrest, a

summons or the recovery of weapons or contraband. (Weapons were recovered in 1.14% of the total number of stops reported in 2011.)

428. In fact, the City and/or Kelly were deliberately indifferent to statistical evidence/reports/information/complaints and other information that they possessed that indicated that: the stop and frisk program was targeting minorities, targeting minority communities or precincts; evidence that the stop and frisk program was racially biased; the program was targeting youths; officers were using force, including unnecessary or excessive force on carrying out this program; the program was being unconstitutionally applied; the training police officers received was inadequate, and that there was a need for proper training in the academy, for supplemental training in service, and for in-field supervision and training in the laws of the 4th Amendment, the legal use of force, for reasonable suspicion and general police guidelines and search and seizure laws and parameters.

429. Upon information and belief, the City and/or Kelly, acted with deliberate indifference that the aforementioned issues would, could and did result in the countless violations of constitutional rights of its citizenry.

430. Upon information and belief, prior to April 7, 2012, the City and/Kelly, failed to require that precinct commanders audit each officer worksheets, and failed to maintain or develop a system or methodology for identifying and tracking police officers who receive a baseline number of civilian complaints related to improper stops, improper frisks or searches, unnecessary or excessive use of force, threats, illegal entry into citizen's homes and/or discourtesy.

431. The stop and frisk program especially targeted minority youths in the 14-24 age range.

432. Although Blacks and Latinos males between the ages of 14 and 24 account for only 4.7% of the City's population, they accounted for 41.6% of all stops in 2011. White youths in the same age group account for 2% of the City's population and were responsible for only 3.8% of the total number of stops. In 2011, young black men between the ages of 14 and 24 were "reported" being stopped 168,126 times, which exceeded the total number of young black men in this age range who reside in New York City (158,406).

433. Minority youths were particularly vulnerable not only to stops, or stop and frisks, but more alarmingly to the use of force by the NYPD. As reported in Growing Up Police in the Age of Aggressive Police Policies, by Brett G. Stoudt, Michelle Fine and Madeline Foz, in New York Law School Review, Volume 56, 2011/12, youths who were stopped during the two year period if 2008-2009 were frisked 61.3% of the time, they were arrested 5.4% of the time, issued summons 5.1% of the time and weapons were found on the youths 1.2% of the time (most if the weapons recovered were knives, guns comprised only 17% of the total weapons recovered). Yet, it was reported that force was used against the same youths 26.3% of the time, or approximately 2 ½ times more than the likelihood of being arrested or issued a summons. It was also found that reports of youths carrying a suspicious bulge or object, actions indicative of engaging in a violent crime, or an object in plain view 10.5%, 9.6% and 1.7% respectively, were highly unreliable and unlikely to lead to the recovery of an illicit gun. The total

number reported (using the aforementioned criteria) of stop and frisks of youths were 90,756, yet the total illegal guns recovered (under any basis or criteria for reasonable suspicion) was 831 during that period, or .009%.

434. In all, 416,350 youths (381,578 or 91.6% were males and 218,260 of the total youths stopped (52.4%) were categorized as black or African American) were stopped during the 2008-2009 and 405,898 (97.5%) of them were free of weapons or contraband. Only 10% of the total youths stopped were white youths and only 7% female from 2008-2009.

435. Upon information and belief, the "stop and frisk" program: targeted or was applied, in a discriminatory manner against minorities; was applied or enforced in predominately minority communities; was age biased against youths, age 14-24; and was gender biased (against males) as well.

436. These youths were also subjected to the unnecessary use of force. Stodt, Fine and Fox further reported that of the 109,499 times that force was used against youths in 2008 and 2009, the police in 2,142 instances, (more than twice the number if times that any weapon was recovered) drew their firearm and/or pointed their firearm at a suspect. In the other 107,357 cases where force was reportedly used, it included hands on suspect, placing the suspect on the ground or against a wall/car, the use of a baton or pepper spray among other things.

437. The racial, gender and age disparity of these statistics could not and should not have been ignored.

438. Upon information and belief, the NYPD issued a Department Operations Order in 2002 prohibiting racial profiling. Nevertheless, upon information

and belief, racial profiling continued to be utilized as a policing tool of the NYPD as of April 7, 2012. Moreover, there was no Operations Order or directive prohibiting any type of gender or age bias application of policing practices in place on that date.

439. Police Commissioner Kelly has stated that the Stop and Frisk Program, and the "stops" thereunder, serve as a deterrent to criminal activity, which includes the criminal possession of a weapon. Therefore, he endorsed, and upon information and belief, continues to endorse said program and have it applied by the police officers under his command, although said program was being used to stop and stop and frisk citizens without reasonable suspicion, and in a racially biased manner.

440. Upon information and belief, this Stop and Frisk program was in effect on April 7, 2012 and was trained, implemented and overseen throughout the City of New York and all precincts therein, including the NBBX by Det. Bryan Pitts and Det. Gena Jonas.

441. While the aforementioned statistics were compiled for all New York City precincts, the statistics are particularly alarming for the Bronx, where the plaintiff resides.

442. The most common reason used by the NYPD to justify stopping civilians of New York City, almost 90% of whom had committed no crime or violation, falls predominantly within the category "furtive movements." In 2011, that reason was given in 51.3% of the total number of stops.

443. However upon information and belief, the City and/or Kelly, either failed to train officers what constitutes "furtive movements", or acted with deliberate

indifference to the need enhance or supplement training in the area; they acted with deliberate indifference to the unequal application of stop and frisk procedures when "furtive movements" are committed by "whites", not resulting in "stops", while the same movements when committed by minorities resulted in "stops"; and they acted deliberate indifference to the knowledge that "furtive movements" was not a statistically reliable marker of possession of contraband, weapon, or that a person has committed, or is about to commit a crime. In sum, "furtive movements" has been statistically proven to be unreliable to establish reasonable suspicion to justify a stop, or a stop, question and frisk.

444. The aforementioned statistical proof shows that said reasons or rationale for said stops were inaccurate, unreliable, untrue or without statistical probability of success.

445. Further evidence of the defendants' over aggressive stop and frisk policies which targeted minority communities, such as the Wakefield section of the Bronx, can be found in the Trespass Affidavit Program, formerly known as Operation Clean Halls. In Ligon v. City of New York, No. 12, Civ 2274, plaintiff brought an action alleging that the NYPD's trespass stops outside TAP buildings are often without reasonable suspicion, violating the 4th Amendment rights. Justice Scheinldin in a written decision filed January 8, 2013, agreed.

446. In her decision, Justice Scheindlin stated "while it may be difficult to say where, precisely to draw the line between a constitutional and unconstitutional police encounter, such a line exists, and the NYPD has

systematically crossed it while making trespass stops outside TAP buildings in the Bronx." (Ligon page 10)

447. Although Bronx District Attorney Jeanette Rucker sent memos to NYPD Police Commanders and police officials expressing her concerns of the reasons police were providing for stopping innocent individuals outside Clean Hall building, her concerns were unheeded.

448. Dr. Fagan concluded that 63% of "the recorded trespass stops outside the Clean Halls building in the Bronx in 2011, where no indoor behavior was observed were not based on any articulated reasonable suspicion." (Ligon at 67)

449. Although Derrick Moulton's case does not involve a Clean Halls Building or fall within the TAP program, it does fall within the umbrella fo the defendants' over aggressive policing policies directed at minorities and at minority communities, and their failure to adequately train and supervise its officers in the laws and parameters set by the 4th Amendment. The actions taken by the officers on April 7, 2012 as will set forth herein, resulting in Derrick Moulton's constitutional violations, stems in large measure, from the policies, customs and procedures set by the defendants, including the stop and frisk program, the inadequate training and supervision of, and by its officers, and/or the pressures exerted by the City, NYPD and/or Kelly to meet performance standards measured by the number of arrests made and summons issued.

450. Upon information and belief, said Stop and Frisk program was established, maintained, supervised, continued, applied and monitored to meet

arrest/summons, numbers/quotas and to establish and/or meet performance standards.

451. Upon information and belief, the NYPD, City and/or Kelly established performance standards which demanded, or resulted in increased levels of stops and frisks.

452. According to the 10/17/11 Police Officer Performance Objectives Operation Order, Commissioner Kelly directed all commands that "Department managers can and must set performance goals" relating to the "issuance of summons, the stopping and questioning of suspicious individuals, and the arrests of criminals."

453. The same Operation Order stated "uniformed members.....Who do not demonstrate activities...or who fail engage in proactive activities..will be evaluated accordingly and their assignments re-assessed."

454. In the Floyd case, Justice Scheindlin cited evidence of a quota system which included a minimum number of monthly "stops." Said evidence includes:

1) the deposition of Inspector Dwayne Montgomery, Commander of the 28th Precinct, who testified that he expected his officers to conduct a minimum of 2.3 stop and frisks per month and used that number "as a way of just gauging whether or not they were doing their job." Floyd at 20.

2) Police Officer Adhyl Polanco of the 41st Precinct testified that his commanding officers announced specific quotas for arrests and summons. He further testified that officers were threatened with reduced overtime or reassigned for failure to meet quotas.

3) Police Officer Adrian Schoolcraft recorded all roll calls at the 81st Precinct where supervisors were yelling and instructing officers to conduct unlawful stops and arrest to meet higher performance numbers. This order was coming down "the chain of command." The statements were made by Lt. Delafuents, Deputy Inspector Mauriello and Sgt. Stukes and cites the instructions of Chief of the Transportation Bureau of the City of New York Police Department, Michael Scagnelli.

4) Police Officer Luis Pichardo of the 28th Precinct offered testimony that his supervisors imposed a five summons per tour quota.

455. The acts of police officers who violate the civil and constitutional rights of the citizens of New York routinely go unreported by fellow police officers, not investigated by their superior officers, and consequently their acts, actions, omissions go unpunished. Failure to intervene and report is the norm, not the exception. In none of the case cited in paragraph 106 a-w above did the police officers intervene in the face of misconduct; nor did they report the misconduct of their fellow officers or receive any punishment for having failed to do so. Consequently, the acts of police officers in which they use excessive force, engage in racial profiling, making or file false arrests and reports, make warrantless entry into citizens' homes, etc., are condoned by other officers present, their supervisors, precinct commanders, including Assistant Chief Purtell and the NYPD Commissioner Kelly.

456. The City's and/or NYPD tolerance for brutality, excessive force, illegal and/or retaliatory arrests, and their emphasis to "come down hard on quality of life infractions", leads to a systemic practice and policy wherein City officials seem fairly tolerant, both outwardly and inwardly of police brutality, silence in the face of brutality and/or illegal stops, frisks, searches, seizures and/or arrests, warrantless entry into citizens' homes and engage in arrest quotas. A systemic practice where officers who report said misconduct are not viewed as "good cops", but rather as outcasts and snitches and are isolated, ostracized and often transferred, thereby perpetuating the illegal conduct of the officers.

457. Some instances where officers were treated as outcasts for reporting misconduct and/or an arrest/summons quota system are as follows:

a. the existence of arrest quotas, summons quotas and approval of illegal stops and arrests have been exposed by Police Officer Adrian Schoolcraft in a separate lawsuit which was cited by Justice Scheindlin, in David Floyd et al v. The City of New York, 08 Civ 1034.

b. Justice Scheindlin cited the deposition of Police Officer Adhyl Polanco of the 41st precinct, stating that commanding officers set specific quotas for arrests and summons and for stop and frisks (UF-250's), and threatened to reduce overtime for officers who failed to perform well and to reassign those who fail to meet quotas to less desirable posts.

c. According to secretly taped recorded conversations made by Schoolcraft, a Lieutenant, a Deputy Inspector and a Chief of the Division of Transportation all can be heard encouraging/demanding increased stops, summons, detentions and/or arrests.

d. Police Officer Craig Matthews of the 42nd precinct filed a lawsuit against the NYPD claiming the existence of a quota system and a systematic retaliation and harassment to those who did not comply.

e. Recently, retired Detective James Griffin, filed a lawsuit claiming that in the NYPD there exists a culture wherein officers who report corruption, face harassment and a hostile work environment and this conduct was tolerated by supervisors within the NYPD.

458. Upon information and belief, arrest quotas and summons quotas, often couched by the defendants as "performance standards", are ingrained as a part of a NYPD officer's job, leading to shortcuts and violations of citizen's constitutional rights to meet those so called performance levels.

459. In the matter of Dominguez v. City of New York, a lawsuit pending in Bronx Supreme Court under Index #305140-2011, a named defendant, Sgt. Karl Kindred of the Bronx Narcotics Division and a supervisor, stated under oath on April 19, 2013 at his deposition, see P. 32-37, **see Exhibit One,** that "all individuals who were merely present in an apartment would be arrested if it was pursuant to a search warrant", which clearly is not the law.

460. Further evidence of a pattern, policy or custom is evidenced by a recent New York Daily News article dated May 19, 2013, documenting rampant police

abuse where the officers involved were not disciplined in any meaningful manner but rather promoted to a higher position, see **Exhibit Two.**

AS AND FOR A THIRTY-SIXTH CAUSE OF ACTION

461. At all times mentioned, Plaintiff **DANE OMAR SPENCER** was a resident of Bronx County, City and State of New York.

462. At all times mentioned, Defendant **CITY OF NEW YORK,** was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.

463. On or about the 12th day of December, 2012 and within ninety (90)days after the claim herein arose, the Plaintiff served a Notice of Claim in writing sworn to on their behalf upon the Defendant CITY OF NEW YORK, by delivering a copy thereof in duplicate to the officer designated to receive such process personally, which Notice of Claim advised the Defendant CITY OF NEW YORK, of the nature, place, time and manner in which the claim arose, the items of damage and injuries sustained so far as was then determinable.

464. At least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety (90) days after the happening of the event upon which the claims are based.

465. The Plaintiff has complied with the request of the municipal Defendant's for an oral examination pursuant to Section 50-H of the General Municipal Law

and/or the Public Authorities Law and/or no such request was made within the applicable period.

466. Upon information and belief, at all times mentioned, Defendants **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, **THE CITY OF NEW YORK.**

467. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants jointly and severally in their capacity as police officers, wrongfully touched, grabbed, handcuffed and seized the Plaintiff **DANE OMAR SPENCER,** in an excessive manner about his person, causing him physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A THIRTY-SEVENTH CAUSE OF ACTION

468. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "7" with full force and effect as though set forth at length herein.

469. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally did place Plaintiff **DANE OMAR SPENCER** in imminent fear

of physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A THIRTY-EIGHTH CAUSE OF ACTION

470. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "469" with full force and effect as though set forth at length herein.

471. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and unlawfully arrested the Plaintiff, restrained him and his liberty and then took him into custody to a police station in the County of the Bronx and there charged him with the crimes on Docket No. 2012BX021165. The Plaintiff was thereafter held in custody over the course of approximately three (3) days until he was released on his own recognizance. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A THIRTY-NINTH CAUSE OF ACTION

472. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "471" with full force and effect as though set forth at length herein.

473. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any valid warrant, order or other legal process and without any legal right, wrongfully and unlawfully imprisoned the Plaintiff, restrained him and his liberty and then took him into custody and causing him to be incarcerated as a detainee in the City of New York's Correctional Facility. The Plaintiff was thereafter held in custody over the course of approximately three (3) days before he was released. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FORTIETH CAUSE OF ACTION

474. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "473" with full force and effect as though set forth at length herein.

475. Upon information and belief, on or about April 7, 2012 and from that time until the dismissal of charges on or about September 25, 2012 which was a favorable termination for the accused by the Honorable Judge presiding at, Bronx County Supreme Court, Defendants **CITY OF NEW YORK, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** deliberately and maliciously prosecuted Plaintiff **DANE OMAR SPENCER,** an innocent man without any probable cause whatsoever, by filing or causing a criminal court complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of

falsely accusing the plaintiff of violations of the criminal laws of the State of New York.

476. The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiff and due to the absence of probable cause malice can be inferred.

477. The commencement of these criminal proceedings under Docket No. 2012BX021161 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.

478. As a result of the malicious prosecution, Plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearances to defend his liberty against these unjust charges.

AS AND FOR A FORTY-FIRST CAUSE OF ACTION

(This Cause of action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

479. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "18" as it set forth at length herein.

480. Defendants **DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996** were at all times relevant, duly appointed and acting officers of the City of New York Police Department.

481. At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

482. Plaintiff **DANE OMAR SPENCER** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

483. The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.

484. On or about April 7, 2012, the Defendants, armed police, while effectuating the seizure of the Plaintiff **DANE OMAR SPENCER**, did search, seize, assault and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

485. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

a. Freedom from assault to his person;

b. Freedom from battery to his person;

c. Freedom from illegal search and seizure;

d. Freedom from false arrest;

e. Freedom from malicious prosecution;

f. Freedom from the use of excessive force during the arrest process;

g. Freedom from unlawful imprisonment.

486. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

487. The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A FORTY-SECOND CAUSE OF ACTION

488. Plaintiff incorporates, repeats and re-alleges all of the allegations contained in Paragraphs "1" through "487" with full force and effect as though set forth at length herein. (This Cause of Action applies to the City of New York and the officer sued in their official capacity should be characterized as a "Monell" claim.)

489. Defendant **CITY OF NEW YORK** and **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY.** has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.

490. **THE CITY OF NEW YORK** was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest a search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should not he used where a criminal defendant is not resisting arrest.

491. **THE CITY OF NEW YORK** is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:

1. Probable cause must be present before an individual such as the Plaintiff herein can he arrested.
2. Excessive force cannot be used against an individual who does not physically resist arrest.
3. An individual who sustains physical injury at the hands of the police during the arrest process should receive prompt medical attention.
4. Police cannot stop, seize or search individuals as the Plaintiff herein, when they merely see two denizens of the City of New York having a conversation, place their hands close to each other, consistent with greeting an individuals give each other, where no United States currency or another object has been exchanged for the item nor have the police seen whether the object supposedly passed from on e individual was an illegal object and when after the search and

seizure no contraband is seen or taken from the person of the plaintiff.

492. The foregoing acts, omissions and systemic failures are customs and policies of the **CITY OF NEW YORK** which caused the police officers to falsely arrest, maliciously prosecute, seize illegally and search the Plaintiff commit an assault/battery to his person and denied his prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

493. Defendant **CITY OF NEW YORK** was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police Officer Defendants, knew or should have known of the bad disposition of said Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact that these officers were not suitable to be hired and employed by the **CITY OF NEW YORK** and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

494. To demonstrate a de facto policy of unconstitutional dimension, one might only look at the stop and frisk program initiated by Commissioner Raymond Kelly, who has been NYPD Commissioner for over ten (10) years.

495. Upon information and belief, on or before April 7, 2012, the City and Kelly had instituted a highly aggressive "Stop and Frisk" program or policy that was carried out by its police officer employees, including the named defendant officers.

496. In the decade since Kelly has been appointed Police Commissioner, the number of reported annual "street stops" rose from 97,000 in 2002 to 684,330 times in 2011. Upon information and belief, said rise is due to the policies, directives and procedures implemented or approved by the "City" and/or "Kelly".

497. Upon information and belief, as part of its Stop and Frisk Program, the City, Kelly and the NYPD, provide multiple levels of training that covered Stop and Frisk procedures. That includes, but is not limited to, a workshop on Stop and Frisk, videos about the law of reasonable suspicion, patrol guidelines, Operational memorandum and ongoing training after graduating from the Police Academy.

498. Upon information and belief, this program, hereinafter referred to as "Stop and Frisk", disproportionately targeted minorities, males and/or youths for stop, question and/or frisks, resulting in the excessive use of force disproportionately against minorities, and violated the constitutional rights of citizens of New York City, including citizens residing within the confines of Bronx County.

499. In the matter of David Floyd et al. v. City of New York at al. 283 FRD 153, United States District Court, Southern District of New York, Justice Scheindlin, stated that "it is indisputable that the NYPD has an enormous stop and frisk program. There were 2.8 million "documented" stops between 2004 and 2009. These stops were made pursuant to a policy that is designed, implemented and monitored by the NYPD administration" (Order Page 12).

450. Of the reported 1,121,470 stops, question and frisks "reported" in 2008 and 2009 alone, 37% or 416,350 were for individuals between the ages of 14 and 21 (according to the 2010 census this age range represents only 10% of the City population). Thus, we submit that the defendant's stop and frisk policy us heavily and disproportionately focused on youths of New York City, especially minority youths.

451. Statistical evidence further shows that pursuant to the NYPD stop and frisk policies and procedures, a great majority of civilians who were subjected to stop, question and/or frisk had not committed any crime, and that the NYPD engaged in said actions without reasonable suspicions of criminality. Furthermore, statistics show that blacks and Latinos were disproportionately targeted for stops, summons, arrests and excessive use of force.

452. Upon information and belief, it was statistically revealed that of the reported stops and frisks conducted by the NYPD between 2004 and 2009, officers' "suspicions" of criminality was wrong nearly 9 out of 10 times.

453. Upon information and belief, the City, NYPD, and/or Kelly were long aware of the racial disparity of police stop and frisks. In 2007, the NYPD commissioned a study through The Rand Center on Quality Policing to study their stop, question and frisk patterns and practices. The study found that of the half a million persons stopped only 11% were Caucasians, 53% black and 219% Hispanic. Moreover, of the people that were stopped, 45% of Black and Hispanics that were stopped were frisked, while 29% of Caucasians that were stopped were frisked. Yet, when frisked, white

suspects were 70% likelier than black suspects to have a weapon on them. (Rand study analysis of racial disparity in the New York Police Department Stop, Question and Frisk Practice, page xi)

454. The Rand report found that black pedestrians were stopped at a rate 50% greater than their representation in the residential census. RAND report page xi. The Rand report made several recommendations to the NYPD to "improve interactions between police and pedestrians during stops and to improve the accuracy of the data collected during pedestrian stops" (Rand page xv). Some of the many recommendations proposed include: review boroughs with the largest racial disparities in stop outcomes; record the reason(s) that the need to use force was used; monitor radio communications to make sure stop and frisk forms are being filled out; and identify, flag and investigate officers with out of the ordinary stop patterns. Finally, the report found "some correction in training during new officers' initial days on the street might be in order, particularly for any evaluation of Operation Impact practices" (Rand page xvi).

455. Upon information and belief, the defendants did not adopt these suggestions, and as of April 7, 2012, still continued to stop, frisk, search and use force on minorities in a disproportionate manner and target their stop and frisk polices in predominately non-white precincts within the City of New York.

456. Upon information and belief, police officers routinely engage in "stops" and then attempt to justify the stop and/or frisk, when in fact the basis for the stop or stop and frisk was pretextual and/or discriminatory in nature. Upon

information and belief, frisks and/or searches are conducted without justifiable reasons.

457. According to a statistical analysis conducted by Colombia University Professor Jeffrey Fagan, submitted in the Floyd case, police cited (as a reason for stop and frisk) a "suspicious bulge" in 10.4% of all stops, yet a gun was found in .15% of all stops (or 1 out of every 69 persons stopped on suspicion of concealing a weapon). Furtive movements were cited as a reason in more than 50% of all stops.

458. Professor Fagan also statistically found that "NYPD stop and frisks are significantly more frequent for Black and Hispanic residents than they are for White residents, even when adjusting for local crime rates, racial composition of the local population....." Floyd at 29. He further statistically found that when stopped Blacks and Latinos are treated more harshly than Whites stopped on suspicion fo similar criminal activity. The term Black, White and Latinos are included within the NYPD reports and are adopted herein.

459. Analyzed date of the Stop and Frisk Program revealed in a report released by the Center for Constitutional Rights in 2012 found:

1) Analysis of the information recorded by police officers themselves in their stop and frisk reports indicates that more than 95,000 stops lacked reasonable, articulable suspicion and this violated the Fourth Amendment.

2) The NYPD continues to frequently and indiscriminately use the highly subjective and constitutionally questionable categories of "high crime area" and "furtive movements". "High crime area" is checked off in more than

60% of all stops. A comparison of actual crime rates to the claim that a stop was in a "high crime area" reveals that this factor was cited roughly the same rate regardless of the crime rate. "Furtive movement" was also checked in a majority of stops, 53% of them. Here, too, there was no correlation between the frequency of this stated reason for a stop and actual crime rates. Both the frequency of these classifications and their complete absence of any relationship to actual crime rates suggest strongly that they are not legitimate indicators or reasonable, articulable suspicion.

3) Only 6% of stops result in arrest, an extraordinarily small number given that stops are legally supposed to be based on reasonable, articulable suspicion. The rates of seizure of weapons or contraband are minuscule - .12% of stops yield gun seizures and 1.8% contraband - and are lower than the seizure rates of random stops.

460. Since 2009 the number of Stop and Frisks has dramatically risen. In 2010, there were a reported 601,055 stops.

461. For the calendar year 2011, New York City precincts reported 685,724 "stops." Of that total number 350,743 were categorized as stops of persons of black descent and 223,650 were of Latino descent (this does not include the number of individuals who were not categorized and who may be of black or Latino descent). Thus, 83.7% of individuals stopped were categorized as "minorities." Of the 381,704 person frisked in 2011, 330,638 (89.2%) were black and Latinos and 27,341 (7.4%) were whites.

462. According to a 2010 census, blacks make up 25% of the City's population, Latinos 29% and whites 33%.

463. Statistical data also revealed that stop and frisk practices, when measured against the composition of the precinct population, was employed at a much greater frequency in precincts whose population was composed predominantly of minorities. In 2011, the 73rd, 23rd, 81st, 41st and 25th precincts (Brownsville, East Harlem South, Bed Stuyvessant East, Hunts Point and East Harlem North) stopped 29.1%, 23.9%, 21.8%, 21.7% and 20.9% of their populations respectively. Meanwhile, in the Upper East Side (19th Pct.), Bensonhurst (62nd pct.), Bay Ridge (68th pct.), Totenville (123rd pct.) and Borough Park (66th pct.), each predominantly white precincts, residents were stopped at a rate of 2.5%, 2.4%, 2.3%, 2.1% and 2.0% of their populations. The same pattern holds true when the stops resulted in frisks. The top 5 precincts reporting the most number of frisks were minority populated precincts, such as the 75th, 73rd, 44th, 115th and 40th, while the least amount of frisks were conducted in white populated precincts such as the 94th, 18th, 123rdm 17th and 22nd.

464. Even in traditionally white neighborhoods, such as the 17th pct. (East Side, Manhattan), black and Latino residents are stopped at a disproportionate rate when compared to its white citizens who reside within the same pct. To illustrate the point, in 2011, 71.4% of all stops made in Kipps Bay/Murray Hill, NY, were made against blacks and Latinos. Yet, they account for only 7.8% of the total precinct population. In Greenwich Village, where blacks and Latinos comprise only 8% of the precinct, they accounted for 76.6% of all stops. (New York Civil Liberties Union Stop and Frisk 2011 Report) The

same reports also cites the additional precincts engaging in the same practice: 19th, 123rd, 1st, 61st, 11th, 20th, 13th and 62nd.

465. It was further reported that at least one act of force was used in 148,079 "stops" (or in 21.5% of the total number of stops in 2011), with 76,483 reported the use of force against blacks, (21.8% of all stops of the 350,743 stops made against them in 2011). It should be noted that 51.7% of all "reported" instances of use of force by New York City Police were made against persons that the NYPD categorized as "black". In 2011, blacks and Latinos had force used against them 129,590 times as compared to white, 9,765 times.

466. To illustrate the prevalence of the use of force within the context of the "Stop and Frisk" program, it should be noted that the number of stops in which at least one act of force was "reported" as being used (148,079 times) exceeded the total number of summons (41,215) and arrests (40,883) made from reported "stops" in New York City in 2011 (total 82,098). Thus, it was 1.8 more times likely that force was used by police during a stop and frisk encounter than it was that said encounter resulted in an arrest or a summons being issued.

467. Upon information and belief, the City and Kelly and/or NYPD, either condoned the use of stop and frisk program, or the use of force in conjunction with it, as "means to an end", or acted with deliberate indifference to the knowledge that it was being utilized in that manner in a vast number of cases where there was no reasonable suspicion or no

evidence of any criminality that would justify the use of any force, or force to the degree it was used, much less the initial stop and frisk.

468. The City, and/or Kelly sought to justify the tremendous increase in the stop and frisk program by claiming that the program helped rid the City of illegal guns. Yet, that contention or rationale is not statistically borne out. Nor would it serve as justification to violate the laws of the United States Constitution or the State of New York. In 2003, the NYPD conducted 160,851 stops and recovered 604 guns. In 2011, the NYPD conducted 685,724 stops, or an additional 524,873 stops when measured against 2003 statistics. Yet they only recovered and extra 176 more illegal guns as, or a total of 780. That computes to a .0003% success rate for the additional stops made.

469. Upon information and belief, the City and/or Kelly acted with deliberate indifference to: statistical evidence that enforcement or application of the "Stop and Frisk" program was highly unlikely to result in an arrest, a summons or the recovery of weapons or contraband. (Weapons were recovered in 1.14% of the total number of stops reported in 2011.)

470. In fact, the City and/or Kelly were deliberately indifferent to statistical evidence/reports/information/complaints and other information that they possessed that indicated that: the stop and frisk program was targeting minorities, targeting minority communities or precincts; evidence that the stop and frisk program was racially biased; the program was targeting youths; officers were using force, including unnecessary or excessive force on carrying out this program; the program was being unconstitutionally applied; the training police officers received was inadequate, and that there

was a need for proper training in the academy, for supplemental training in service, and for in-field supervision and training in the laws of the 4th Amendment, the legal use of force, for reasonable suspicion and general police guidelines and search and seizure laws and parameters.

471. Upon information and belief, the City and/or Kelly, acted with deliberate indifference that the aforementioned issues would, could and did result in the countless violations of constitutional rights of its citizenry.

472. Upon information and belief, prior to April 7, 2012, the City and/Kelly, failed to require that precinct commanders audit each officer worksheets, and failed to maintain or develop a system or methodology for identifying and tracking police officers who receive a baseline number of civilian complaints related to improper stops, improper frisks or searches, unnecessary or excessive use of force, threats, illegal entry into citizen's homes and/or discourtesy.

473. The stop and frisk program especially targeted minority youths in the 14-24 age range.

474. Although Blacks and Latinos males between the ages of 14 and 24 account for only 4.7% of the City's population, they accounted for 41.6% of all stops in 2011. White youths in the same age group account for 2% of the City's population and were responsible for only 3.8% of the total number of stops. In 2011, young black men between the ages of 14 and 24 were "reported" being stopped 168,126 times, which exceeded the total number of young black men in this age range who reside in New York City (158,406).

475. Minority youths were particularly vulnerable not only to stops, or stop and frisks, but more alarmingly to the use of force by the NYPD. As reported in Growing Up Police in the Age of Aggressive Police Policies, by Brett G. Stoudt, Michelle Fine and Madeline Foz, in New York Law School Review, Volume 56, 2011/12, youths who were stopped during the two year period if 2008-2009 were frisked 61.3% of the time, they were arrested 5.4% of the time, issued summons 5.1% of the time and weapons were found on the youths 1.2% of the time (most if the weapons recovered were knives, guns comprised only 17% of the total weapons recovered). Yet, it was reported that force was used against the same youths 26.3% of the time, or approximately 2 ½ times more than the likelihood of being arrested or issued a summons. It was also found that reports of youths carrying a suspicious bulge or object, actions indicative of engaging in a violent crime, or an object in plain view 10.5%, 9.6% and 1.7% respectively, were highly unreliable and unlikely to lead to the recovery of an illicit gun. The total number reported (using the aforementioned criteria) of stop and frisks of youths were 90,756, yet the total illegal guns recovered (under any basis or criteria for reasonable suspicion) was 831 during that period, or .009%.

476. In all, 416,350 youths (381,578 or 91.6% were males and 218,260 of the total youths stopped (52.4%) were categorized as black or African American) were stopped during the 2008-2009 and 405,898 (97.5%) of them were free of weapons or contraband. Only 10% of the total youths stopped were white youths and only 7% female from 2008-2009.

477. Upon information and belief, the "stop and frisk" program: targeted or was applied, in a discriminatory manner against minorities; was applied or enforced in predominately minority communities; was age biased against youths, age 14-24; and was gender biased (against males) as well.

478. These youths were also subjected to the unnecessary use of force. Stodt, Fine and Fox further reported that of the 109,499 times that force was used against youths in 2008 and 2009, the police in 2,142 instances, (more than twice the number if times that any weapon was recovered) drew their firearm and/or pointed their firearm at a suspect. In the other 107,357 cases where force was reportedly used, it included hands on suspect, placing the suspect on the ground or against a wall/car, the use of a baton or pepper spray among other things.

479. The racial, gender and age disparity of these statistics could not and should not have been ignored.

480. Upon information and belief, the NYPD issued a Department Operations Order in 2002 prohibiting racial profiling. Nevertheless, upon information and belief, racial profiling continued to be utilized as a policing tool of the NYPD as of April 7, 2012. Moreover, there was no Operations Order or directive prohibiting any type of gender or age bias application of policing practices in place on that date.

481. Police Commissioner Kelly has stated that the Stop and Frisk Program, and the "stops" thereunder, serve as a deterrent to criminal activity, which includes the criminal possession of a weapon. Therefore, he endorsed, and upon information and belief, continues to endorse said program and have it

applied by the police officers under his command, although said program was being used to stop and stop and frisk citizens without reasonable suspicion, and in a racially biased manner.

482. Upon information and belief, this Stop and Frisk program was in effect on April 7, 2012 and was trained, implemented and overseen throughout the City of New York and all precincts therein, including the NBBX by Det. Bryan Pitts and Det. Gena Jonas.

483. While the aforementioned statistics were compiled for all New York City precincts, the statistics are particularly alarming for the Bronx, where the plaintiff resides.

484. The most common reason used by the NYPD to justify stopping civilians of New York City, almost 90% of whom had committed no crime or violation, falls predominantly within the category "furtive movements." In 2011, that reason was given in 51.3% of the total number of stops.

485. However upon information and belief, the City and/or Kelly, either failed to train officers what constitutes "furtive movements", or acted with deliberate indifference to the need enhance or supplement training in the area; they acted with deliberate indifference to the unequal application of stop and frisk procedures when "furtive movements" are committed by "whites", not resulting in "stops", while the same movements when committed by minorities resulted in "stops"; and they acted deliberate indifference to the knowledge that "furtive movements" was not a statistically reliable marker of possession of contraband, weapon, or that a person has committed, or is about to commit a crime. In sum, "furtive movements" has been statistically

proven to be unreliable to establish reasonable suspicion to justify a stop, or a stop, question and frisk.

486. The aforementioned statistical proof shows that said reasons or rationale for said stops were inaccurate, unreliable, untrue or without statistical probability of success.

487. Further evidence of the defendants' over aggressive stop and frisk policies which targeted minority communities, such as the Wakefield section of the Bronx, can be found in the Trespass Affidavit Program, formerly known as Operation Clean Halls. In Ligon v. City of New York, No. 12, Civ 2274, plaintiff brought an action alleging that the NYPD's trespass stops outside TAP buildings are often without reasonable suspicion, violating the 4th Amendment rights. Justice Scheinldin in a written decision filed January 8, 2013, agreed.

488. In her decision, Justice Scheindlin stated "while it may be difficult to say where, precisely to draw the line between a constitutional and unconstitutional police encounter, such a line exists, and the NYPD has systematically crossed it while making trespass stops outside TAP buildings in the Bronx." (Ligon page 10)

489. Although Bronx District Attorney Jeanette Rucker sent memos to NYPD Police Commanders and police officials expressing her concerns of the reasons police were providing for stopping innocent individuals outside Clean Hall building, her concerns were unheeded.

490. Dr. Fagan concluded that 63% of "the recorded trespass stops outside the Clean Halls building in the Bronx in 2011, where no indoor behavior was

observed were not based on any articulated reasonable suspicion." (Ligon at 67)

491. Although Dane Omar Spencer's case does not involve a Clean Halls Building or fall within the TAP program, it does fall within the umbrella fo the defendants' over aggressive policing policies directed at minorities and at minority communities, and their failure to adequately train and supervise its officers in the laws and parameters set by the 4th Amendment. The actions taken by the officers on April 7, 2012 as will set forth herein, resulting in Dane Omar Spencer's constitutional violations, stems in large measure, from the policies, customs and procedures set by the defendants, including the stop and frisk program, the inadequate training and supervision of, and by its officers, and/or the pressures exerted by the City, NYPD and/or Kelly to meet performance standards measured by the number of arrests made and summons issued.

492. Upon information and belief, said Stop and Frisk program was established, maintained, supervised, continued, applied and monitored to meet arrest/summons, numbers/quotas and to establish and/or meet performance standards.

493. Upon information and belief, the NYPD, City and/or Kelly established performance standards which demanded, or resulted in increased levels of stops and frisks.

494. According to the 10/17/11 Police Officer Performance Objectives Operation Order, Commissioner Kelly directed all commands that "Department managers can and must set performance goals" relating to the "issuance of

summons, the stopping and questioning of suspicious individuals, and the arrests of criminals."

495. The same Operation Order stated "uniformed members.....Who do not demonstrate activities...or who fail engage in proactive activities..will be evaluated accordingly and their assignments re-assessed."

496. In the Floyd case, Justice Scheindlin cited evidence of a quota system which included a minimum number of monthly "stops." Said evidence includes:

1) the deposition of Inspector Dwayne Montgomery, Commander of the 28th Precinct, who testified that he expected his officers to conduct a minimum of 2.3 stop and frisks per month and used that number "as a way of just gauging whether or not they were doing their job." Floyd at 20.

2) Police Officer Adhyl Polanco of the 41st Precinct testified that his commanding officers announced specific quotas for arrests and summons. He further testified that officers were threatened with reduced overtime or reassigned for failure to meet quotas.

3) Police Officer Adrian Schoolcraft recorded all roll calls at the 81st Precinct where supervisors were yelling and instructing officers to conduct unlawful stops and arrest to meet higher performance numbers. This order was coming down "the chain of command." The statements were made by Lt. Delafuents, Deputy Inspector Mauriello and Sgt. Stukes and cites the instructions of Chief of the Transportation Bureau of the City of New York Police Department, Michael Scagnelli.

4) Police Officer Luis Pichardo of the 28th Precinct offered testimony that his supervisors imposed a five summons per tour quota.

497. The acts of police officers who violate the civil and constitutional rights of the citizens of New York routinely go unreported by fellow police officers, not investigated by their superior officers, and consequently their acts, actions, omissions go unpunished. Failure to intervene and report is the norm, not the exception. In none of the case cited in paragraph 106 a-w above did the police officers intervene in the face of misconduct; nor did they report the misconduct of their fellow officers or receive any punishment for having failed to do so. Consequently, the acts of police officers in which they use excessive force, engage in racial profiling, making or file false arrests and reports, make warrantless entry into citizens' homes, etc., are condoned by other officers present, their supervisors, precinct commanders, including Assistant Chief Purtell and the NYPD Commissioner Kelly.

498. The City's and/or NYPD tolerance for brutality, excessive force, illegal and/or retaliatory arrests, and their emphasis to "come down hard on quality of life infractions", leads to a systemic practice and policy wherein City officials seem fairly tolerant, both outwardly and inwardly of police brutality, silence in the face of brutality and/or illegal stops, frisks, searches, seizures and/or arrests, warrantless entry into citizens' homes and engage in arrest quotas. A systemic practice where officers who report said misconduct are not viewed as "good cops", but rather as outcasts and

snitches and are isolated, ostracized and often transferred, thereby perpetuating the illegal conduct of the officers.

499. Some instances where officers were treated as outcasts for reporting misconduct and/or an arrest/summons quota system are as follows:

a. the existence of arrest quotas, summons quotas and approval of illegal stops and arrests have been exposed by Police Officer Adrian Schoolcraft in a separate lawsuit which was cited by Justice Scheindlin, in David Floyd et al v. The City of New York, 08 Civ 1034.

b. Justice Scheindlin cited the deposition of Police Officer Adhyl Polanco of the 41st precinct, stating that commanding officers set specific quotas for arrests and summons and for stop and frisks (UF-250's), and threatened to reduce overtime for officers who failed to perform well and to reassign those who fail to meet quotas to less desirable posts.

c. According to secretly taped recorded conversations made by Schoolcraft, a Lieutenant, a Deputy Inspector and a Chief of the Division of Transportation all can be heard encouraging/demanding increased stops, summons, detentions and/or arrests.

d. Police Officer Craig Matthews of the 42nd precinct filed a lawsuit against the NYPD claiming the existence of a quota system and a systematic retaliation and harassment to those who did not comply.

e. Recently, retired Detective James Griffin, filed a lawsuit claiming that in the NYPD there exists a culture wherein officers who report

corruption, face harassment and a hostile work environment and this conduct was tolerated by supervisors within the NYPD.

500. Upon information and belief, arrest quotas and summons quotas, often couched by the defendants as "performance standards", are ingrained as a part of a NYPD officer's job, leading to shortcuts and violations of citizen's constitutional rights to meet those so called performance levels.

501. In the matter of Dominguez v. City of New York, a lawsuit pending in Bronx Supreme Court under Index #305140-2011, a named defendant, Sgt. Karl Kindred of the Bronx Narcotics Division and a supervisor, stated under oath on April 19, 2013 at his deposition, see P. 32-37, **see Exhibit One,** that "all individuals who were merely present in an apartment would be arrested if it was pursuant to a search warrant", which clearly is not the law.

502. Further evidence of a pattern, policy or custom is evidenced by a recent New York Daily News article dated May 19, 2013, documenting rampant police abuse where the officers involved were not disciplined in any meaningful manner but rather promoted to a higher position, see **Exhibit Two.**

AS AND FOR A FORTY-THIRD CAUSE OF ACTION

503. At all times mentioned, Plaintiff **BARRINGTON GREEN** was a resident of Bronx County, City and State of New York.

504. At all times mentioned, Defendant **CITY OF NEW YORK,** was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.

505. On or about the 12th day of December, 2012 and within ninety (90)days after the claim herein arose, the Plaintiff served a Notice of Claim in writing

sworn to on their behalf upon the Defendant CITY OF NEW YORK, by delivering a copy thereof in duplicate to the officer designated to receive such process personally, which Notice of Claim advised the Defendant CITY OF NEW YORK, of the nature, place, time and manner in which the claim arose, the items of damage and injuries sustained so far as was then determinable.

506. At least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety (90) days after the happening of the event upon which the claims are based.

507. The Plaintiff has complied with the request of the municipal Defendant's for an oral examination pursuant to Section 50-H of the General Municipal Law and/or the Public Authorities Law and/or no such request was made within the applicable period.

508. Upon information and belief, at all times mentioned, Defendants **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, **THE CITY OF NEW YORK.**

509. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants jointly

and severally in their capacity as police officers, wrongfully touched, grabbed, handcuffed and seized the Plaintiff **BARRINGTON GREEN,** in an excessive manner about his person, causing him physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A FORTY-FOURTH CAUSE OF ACTION

510. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "509" with full force and effect as though set forth at length herein.

511. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally did place Plaintiff **BARRINGTON GREEN** in imminent fear of physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A FORTY-FIFTH CAUSE OF ACTION

512. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "511" with full force and effect as though set forth at length herein.

513. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly

and severally without any warrant, order or other legal process and without any legal right, wrongfully and unlawfully arrested the Plaintiff, restrained him and his liberty and then took him into custody to a police station in the County of the Bronx and there charged him with the crimes on Docket No. 2012BX021159. The Plaintiff was thereafter held in custody over the course of approximately three (3) days until he was released on his own recognizance. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FORTY-SIXTH CAUSE OF ACTION

514. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "513" with full force and effect as though set forth at length herein.

515. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any valid warrant, order or other legal process and without any legal right, wrongfully and unlawfully imprisoned the Plaintiff, restrained him and his liberty and then took him into custody and causing him to be incarcerated as a detainee in the City of New York's Correctional Facility. The Plaintiff was thereafter held in custody over the course of approximately three (3) days before he was released. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FORTY-SEVENTH CAUSE OF ACTION

516. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "515" with full force and effect as though set forth at length herein.

517. Upon information and belief, on or about April 7, 2012 and from that time until the dismissal of charges on or about September 25, 2012 which was a favorable termination for the accused by the Honorable Judge presiding at, Bronx County Supreme Court, Defendants **CITY OF NEW YORK, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** deliberately and maliciously prosecuted Plaintiff **BARRINGTON GREEN,** an innocent man without any probable cause whatsoever, by filing or causing a criminal court complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of falsely accusing the plaintiff of violations of the criminal laws of the State of New York.

518. The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiff and due to the absence of probable cause malice can be inferred.

519. The commencement of these criminal proceedings under Docket No. 2012BX021159 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.

520. As a result of the malicious prosecution, Plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearances to defend his liberty against these unjust charges.

AS AND FOR A FORTY-EIGHTH CAUSE OF ACTION

(This Cause of action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

521. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "520" as it set forth at length herein.

522. Defendants **DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996** were at all times relevant, duly appointed and acting officers of the City of New York Police Department.

523. At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

524. Plaintiff **SIDIKI ANDERSON** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

525. The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.

526. On or about April 7, 2012, the Defendants, armed police, while effectuating the seizure of the Plaintiff **SIDIKI ANDERSON**, did search, seize, assault

and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

527. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

a. Freedom from assault to his person;

b. Freedom from battery to his person;

c. Freedom from illegal search and seizure;

d. Freedom from false arrest;

e. Freedom from malicious prosecution;

f. Freedom from the use of excessive force during the arrest process;

g. Freedom from unlawful imprisonment.

528. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

529. The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A FORTY-NINTH CAUSE OF ACTION

530. Plaintiff incorporates, repeats and re-alleges all of the allegations contained in Paragraphs "1" through "529" with full force and effect as though set

forth at length herein. (This Cause of Action applies to the City of New York and the officer sued in their official capacity should be characterized as a "Monell" claim.)

531. Defendant **CITY OF NEW YORK** and **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY.** has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.

532. **THE CITY OF NEW YORK** was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest a search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should not he used where a criminal defendant is not resisting arrest.

533. **THE CITY OF NEW YORK** is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:

1. Probable cause must be present before an individual such as the Plaintiff herein can he arrested.

2. Excessive force cannot be used against an individual who does not physically resist arrest.

3. An individual who sustains physical injury at the hands of the police during the arrest process should receive prompt medical attention.

4. Police cannot stop, seize or search individuals as the Plaintiff herein, when they merely see two denizens of the City of New York having a conversation, place their hands close to each other, consistent with greeting an individuals give each other, where no United States currency or another object has been exchanged for the item nor have the police seen whether the object supposedly passed from on e individual was an illegal object and when after the search and seizure no contraband is seen or taken from the person of the plaintiff.

534. The foregoing acts, omissions and systemic failures are customs and policies of the **CITY OF NEW YORK** which caused the police officers to falsely arrest, maliciously prosecute, seize illegally and search the Plaintiff commit an assault/battery to his person and denied his prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

535. Defendant **CITY OF NEW YORK** was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police Officer Defendants, knew or should have known of the bad disposition of said Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact

that these officers were not suitable to be hired and employed by the **CITY OF NEW YORK** and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

536. To demonstrate a de facto policy of unconstitutional dimension, one might only look at the stop and frisk program initiated by Commissioner Raymond Kelly, who has been NYPD Commissioner for over ten (10) years.

537. Upon information and belief, on or before April 7, 2012, the City and Kelly had instituted a highly aggressive "Stop and Frisk" program or policy that was carried out by its police officer employees, including the named defendant officers.

538. In the decade since Kelly has been appointed Police Commissioner, the number of reported annual "street stops" rose from 97,000 in 2002 to 684,330 times in 2011. Upon information and belief, said rise is due to the policies, directives and procedures implemented or approved by the "City" and/or "Kelly".

539. Upon information and belief, as part of its Stop and Frisk Program, the City, Kelly and the NYPD, provide multiple levels of training that covered Stop and Frisk procedures. That includes, but is not limited to, a workshop on Stop and Frisk, videos about the law of reasonable suspicion, patrol guidelines, Operational memorandum and ongoing training after graduating from the Police Academy.

540. Upon information and belief, this program, hereinafter referred to as "Stop and Frisk", disproportionately targeted minorities, males and/or youths for

stop, question and/or frisks, resulting in the excessive use of force disproportionately against minorities, and violated the constitutional rights of citizens of New York City, including citizens residing within the confines of Bronx County.

541. In the matter of David Floyd et al. v. City of New York at al. 283 FRD 153, United States District Court, Southern District of New York, Justice Scheindlin, stated that "it is indisputable that the NYPD has an enormous stop and frisk program. There were 2.8 million "documented" stops between 2004 and 2009. These stops were made pursuant to a policy that is designed, implemented and monitored by the NYPD administration" (Order Page 12).

542. Of the reported 1,121,470 stops, question and frisks "reported" in 2008 and 2009 alone, 37% or 416,350 were for individuals between the ages of 14 and 21 (according to the 2010 census this age range represents only 10% of the City population). Thus, we submit that the defendant's stop and frisk policy us heavily and disproportionately focused on youths of New York City, especially minority youths.

543. Statistical evidence further shows that pursuant to the NYPD stop and frisk policies and procedures, a great majority of civilians who were subjected to stop, question and/or frisk had not committed any crime, and that the NYPD engaged in said actions without reasonable suspicions of criminality. Furthermore, statistics show that blacks and Latinos were disproportionately targeted for stops, summons, arrests and excessive use of force.

544. Upon information and belief, it was statistically revealed that of the reported

stops and frisks conducted by the NYPD between 2004 and 2009, officers' "suspicions" of criminality was wrong nearly 9 out of 10 times.

545. Upon information and belief, the City, NYPD, and/or Kelly were long aware of the racial disparity of police stop and frisks. In 2007, the NYPD commissioned a study through The Rand Center on Quality Policing to study their stop, question and frisk patterns and practices. The study found that of the half a million persons stopped only 11% were Caucasians, 53% black and 219% Hispanic. Moreover, of the people that were stopped, 45% of Black and Hispanics that were stopped were frisked, while 29% of Caucasians that were stopped were frisked. Yet, when frisked, white suspects were 70% likelier than black suspects to have a weapon on them. (Rand study analysis of racial disparity in the New York Police Department Stop, Question and Frisk Practice, page xi)

546. The Rand report found that black pedestrians were stopped at a rate 50% greater than their representation in the residential census. RAND report page xi. The Rand report made several recommendations to the NYPD to "improve interactions between police and pedestrians during stops and to improve the accuracy of the data collected during pedestrian stops" (Rand page xv). Some of the many recommendations proposed include: review boroughs with the largest racial disparities in stop outcomes; record the reason(s) that the need to use force was used; monitor radio communications to make sure stop and frisk forms are being filled out; and identify, flag and investigate officers with out of the ordinary stop patterns. Finally, the report found "some correction in training during new officers'

initial days on the street might be in order, particularly for any evaluation of Operation Impact practices" (Rand page xvi).

547. Upon information and belief, the defendants did not adopt these suggestions, and as of April 7, 2012, still continued to stop, frisk, search and use force on minorities in a disproportionate manner and target their stop and frisk polices in predominately non-white precincts within the City of New York.

548. Upon information and belief, police officers routinely engage in "stops" and then attempt to justify the stop and/or frisk, when in fact the basis for the stop or stop and frisk was pretextual and/or discriminatory in nature. Upon information and belief, frisks and/or searches are conducted without justifiable reasons.

549. According to a statistical analysis conducted by Colombia University Professor Jeffrey Fagan, submitted in the Floyd case, police cited (as a reason for stop and frisk) a "suspicious bulge" in 10.4% of all stops, yet a gun was found in .15% of all stops (or 1 out of every 69 persons stopped on suspicion of concealing a weapon). Furtive movements were cited as a reason in more than 50% of all stops.

550. Professor Fagan also statistically found that "NYPD stop and frisks are significantly more frequent for Black and Hispanic residents than they are for White residents, even when adjusting for local crime rates, racial composition of the local population....." Floyd at 29. He further statistically found that when stopped Blacks and Latinos are treated more harshly than Whites stopped on suspicion fo similar criminal activity. The term Black,

White and Latinos are included within the NYPD reports and are adopted herein.

551. Analyzed date of the Stop and Frisk Program revealed in a report released by the Center for Constitutional Rights in 2012 found:

1) Analysis of the information recorded by police officers themselves in their stop and frisk reports indicates that more than 95,000 stops lacked reasonable, articulable suspicion and this violated the Fourth Amendment.

2) The NYPD continues to frequently and indiscriminately use the highly subjective and constitutionally questionable categories of "high crime area" and "furtive movements". "High crime area" is checked off in more than 60% of all stops. A comparison of actual crime rates to the claim that a stop was in a "high crime area" reveals that this factor was cited roughly the same rate regardless of the crime rate. "Furtive movement" was also checked in a majority of stops, 53% of them. Here, too, there was no correlation between the frequency of this stated reason for a stop and actual crime rates. Both the frequency of these classifications and their complete absence of any relationship to actual crime rates suggest strongly that they are not legitimate indicators or reasonable, articulable suspicion.

3) Only 6% of stops result in arrest, an extraordinarily small number given that stops are legally supposed to be based on reasonable, articulable suspicion. The rates of seizure of weapons or contraband are minuscule - .12% of stops yield gun seizures and 1.8% contraband - and are lower than the seizure rates of random stops.

552. Since 2009 the number of Stop and Frisks has dramatically risen. In 2010, there were a reported 601,055 stops.

553. For the calendar year 2011, New York City precincts reported 685,724 "stops." Of that total number 350,743 were categorized as stops of persons of black descent and 223,650 were of Latino descent (this does not include the number of individuals who were not categorized and who may be of black or Latino descent). Thus, 83.7% of individuals stopped were categorized as "minorities." Of the 381,704 person frisked in 2011, 330,638 (89.2%) were black and Latinos and 27,341 (7.4%) were whites.

554. According to a 2010 census, blacks make up 25% of the City's population, Latinos 29% and whites 33%.

555. Statistical data also revealed that stop and frisk practices, when measured against the composition of the precinct population, was employed at a much greater frequency in precincts whose population was composed predominantly of minorities. In 2011, the 73rd, 23rd, 81st, 41st and 25th precincts (Brownsville, East Harlem South, Bed Stuyvessant East, Hunts Point and East Harlem North) stopped 29.1%, 23.9%, 21.8%, 21.7% and 20.9% of their populations respectively. Meanwhile, in the Upper East Side (19th Pct.), Bensonhurst (62nd pct.), Bay Ridge (68th pct.), Totenville (123rd pct.) and Borough Park (66th pct.), each predominantly white precincts, residents were stopped at a rate of 2.5%, 2.4%, 2.3%, 2.1% and 2.0% of their populations. The same pattern holds true when the stops resulted in frisks. The top 5 precincts reporting the most number of frisks were minority populated precincts, such as the 75th, 73rd, 44th, 115th and 40th, while the least

amount of frisks were conducted in white populated precincts such as the 94th, 18th, 123rdm 17th and 22nd.

556. Even in traditionally white neighborhoods, such as the 17th pct. (East Side, Manhattan), black and Latino residents are stopped at a disproportionate rate when compared to its white citizens who reside within the same pct. To illustrate the point, in 2011, 71.4% of all stops made in Kipps Bay/Murray Hill, NY, were made against blacks and Latinos. Yet, they account for only 7.8% of the total precinct population. In Greenwich Village, where blacks and Latinos comprise only 8% of the precinct, they accounted for 76.6% of all stops. (New York Civil Liberties Union Stop and Frisk 2011 Report) The same reports also cites the additional precincts engaging in the same practice: 19th, 123rd, 1st, 61st, 11th, 20th, 13th and 62nd.

557. It was further reported that at least one act of force was used in 148,079 "stops" (or in 21.5% of the total number of stops in 2011), with 76,483 reported the use of force against blacks, (21.8% of all stops of the 350,743 stops made against them in 2011). It should be noted that 51.7% of all "reported" instances of use of force by New York City Police were made against persons that the NYPD categorized as "black". In 2011, blacks and Latinos had force used against them 129,590 times as compared to white, 9,765 times.

558. To illustrate the prevalence of the use of force within the context of the "Stop and Frisk" program, it should be noted that the number of stops in which at least one act of force was "reported" as being used (148,079 times) exceeded the total number of summons (41,215) and arrests (40,883) made from

reported "stops" in New York City in 2011 (total 82,098). Thus, it was 1.8 more times likely that force was used by police during a stop and frisk encounter than it was that said encounter resulted in an arrest or a summons being issued.

559. Upon information and belief, the City and Kelly and/or NYPD, either condoned the use of stop and frisk program, or the use of force in conjunction with it, as "means to an end", or acted with deliberate indifference to the knowledge that it was being utilized in that manner in a vast number of cases where there was no reasonable suspicion or no evidence of any criminality that would justify the use of any force, or force to the degree it was used, much less the initial stop and frisk.

560. The City, and/or Kelly sought to justify the tremendous increase in the stop and frisk program by claiming that the program helped rid the City of illegal guns. Yet, that contention or rationale is not statistically borne out. Nor would it serve as justification to violate the laws of the United States Constitution or the State of New York. In 2003, the NYPD conducted 160,851 stops and recovered 604 guns. In 2011, the NYPD conducted 685,724 stops, or an additional 524,873 stops when measured against 2003 statistics. Yet they only recovered and extra 176 more illegal guns as, or a total of 780. That computes to a .0003% success rate for the additional stops made.

561. Upon information and belief, the City and/or Kelly acted with deliberate indifference to: statistical evidence that enforcement or application of the "Stop and Frisk" program was highly unlikely to result in an arrest, a

summons or the recovery of weapons or contraband. (Weapons were recovered in 1.14% of the total number of stops reported in 2011.)

562. In fact, the City and/or Kelly were deliberately indifferent to statistical evidence/reports/information/complaints and other information that they possessed that indicated that: the stop and frisk program was targeting minorities, targeting minority communities or precincts; evidence that the stop and frisk program was racially biased; the program was targeting youths; officers were using force, including unnecessary or excessive force on carrying out this program; the program was being unconstitutionally applied; the training police officers received was inadequate, and that there was a need for proper training in the academy, for supplemental training in service, and for in-field supervision and training in the laws of the 4th Amendment, the legal use of force, for reasonable suspicion and general police guidelines and search and seizure laws and parameters.

563. Upon information and belief, the City and/or Kelly, acted with deliberate indifference that the aforementioned issues would, could and did result in the countless violations of constitutional rights of its citizenry.

564. Upon information and belief, prior to April 7, 2012, the City and/Kelly, failed to require that precinct commanders audit each officer worksheets, and failed to maintain or develop a system or methodology for identifying and tracking police officers who receive a baseline number of civilian complaints related to improper stops, improper frisks or searches, unnecessary or excessive use of force, threats, illegal entry into citizen's homes and/or discourtesy.

565. The stop and frisk program especially targeted minority youths in the 14-24 age range.

566. Although Blacks and Latinos males between the ages of 14 and 24 account for only 4.7% of the City's population, they accounted for 41.6% of all stops in 2011. White youths in the same age group account for 2% of the City's population and were responsible for only 3.8% of the total number of stops. In 2011, young black men between the ages of 14 and 24 were "reported" being stopped 168,126 times, which exceeded the total number of young black men in this age range who reside in New York City (158,406).

567. Minority youths were particularly vulnerable not only to stops, or stop and frisks, but more alarmingly to the use of force by the NYPD. As reported in Growing Up Police in the Age of Aggressive Police Policies, by Brett G. Stoudt, Michelle Fine and Madeline Foz, in New York Law School Review, Volume 56, 2011/12, youths who were stopped during the two year period if 2008-2009 were frisked 61.3% of the time, they were arrested 5.4% of the time, issued summons 5.1% of the time and weapons were found on the youths 1.2% of the time (most if the weapons recovered were knives, guns comprised only 17% of the total weapons recovered). Yet, it was reported that force was used against the same youths 26.3% of the time, or approximately 2 ½ times more than the likelihood of being arrested or issued a summons. It was also found that reports of youths carrying a suspicious bulge or object, actions indicative of engaging in a violent crime, or an object in plain view 10.5%, 9.6% and 1.7% respectively, were highly unreliable and unlikely to lead to the recovery of an illicit gun. The total

number reported (using the aforementioned criteria) of stop and frisks of youths were 90,756, yet the total illegal guns recovered (under any basis or criteria for reasonable suspicion) was 831 during that period, or .009%.

568. In all, 416,350 youths (381,578 or 91.6% were males and 218,260 of the total youths stopped (52.4%) were categorized as black or African American) were stopped during the 2008-2009 and 405,898 (97.5%) of them were free of weapons or contraband. Only 10% of the total youths stopped were white youths and only 7% female from 2008-2009.

569. Upon information and belief, the "stop and frisk" program: targeted or was applied, in a discriminatory manner against minorities; was applied or enforced in predominately minority communities; was age biased against youths, age 14-24; and was gender biased (against males) as well.

570. These youths were also subjected to the unnecessary use of force. Stodt, Fine and Fox further reported that of the 109,499 times that force was used against youths in 2008 and 2009, the police in 2,142 instances, (more than twice the number if times that any weapon was recovered) drew their firearm and/or pointed their firearm at a suspect. In the other 107,357 cases where force was reportedly used, it included hands on suspect, placing the suspect on the ground or against a wall/car, the use of a baton or pepper spray among other things.

571. The racial, gender and age disparity of these statistics could not and should not have been ignored.

572. Upon information and belief, the NYPD issued a Department Operations Order in 2002 prohibiting racial profiling. Nevertheless, upon information

and belief, racial profiling continued to be utilized as a policing tool of the NYPD as of April 7, 2012. Moreover, there was no Operations Order or directive prohibiting any type of gender or age bias application of policing practices in place on that date.

573. Police Commissioner Kelly has stated that the Stop and Frisk Program, and the "stops" thereunder, serve as a deterrent to criminal activity, which includes the criminal possession of a weapon. Therefore, he endorsed, and upon information and belief, continues to endorse said program and have it applied by the police officers under his command, although said program was being used to stop and stop and frisk citizens without reasonable suspicion, and in a racially biased manner.

574. Upon information and belief, this Stop and Frisk program was in effect on April 7, 2012 and was trained, implemented and overseen throughout the City of New York and all precincts therein, including the NBBX by Det. Bryan Pitts and Det. Gena Jonas.

575. While the aforementioned statistics were compiled for all New York City precincts, the statistics are particularly alarming for the Bronx, where the plaintiff resides.

576. The most common reason used by the NYPD to justify stopping civilians of New York City, almost 90% of whom had committed no crime or violation, falls predominantly within the category "furtive movements." In 2011, that reason was given in 51.3% of the total number of stops.

577. However upon information and belief, the City and/or Kelly, either failed to train officers what constitutes "furtive movements", or acted with deliberate

indifference to the need enhance or supplement training in the area; they acted with deliberate indifference to the unequal application of stop and frisk procedures when "furtive movements" are committed by "whites", not resulting in "stops", while the same movements when committed by minorities resulted in "stops"; and they acted deliberate indifference to the knowledge that "furtive movements" was not a statistically reliable marker of possession of contraband, weapon, or that a person has committed, or is about to commit a crime. In sum, "furtive movements" has been statistically proven to be unreliable to establish reasonable suspicion to justify a stop, or a stop, question and frisk.

578. The aforementioned statistical proof shows that said reasons or rationale for said stops were inaccurate, unreliable, untrue or without statistical probability of success.

579. Further evidence of the defendants' over aggressive stop and frisk policies which targeted minority communities, such as the Wakefield section of the Bronx, can be found in the Trespass Affidavit Program, formerly known as Operation Clean Halls. In Ligon v. City of New York, No. 12, Civ 2274, plaintiff brought an action alleging that the NYPD's trespass stops outside TAP buildings are often without reasonable suspicion, violating the 4th Amendment rights. Justice Scheinldin in a written decision filed January 8, 2013, agreed.

580. In her decision, Justice Scheindlin stated "while it may be difficult to say where, precisely to draw the line between a constitutional and unconstitutional police encounter, such a line exists, and the NYPD has

systematically crossed it while making trespass stops outside TAP buildings in the Bronx." (Ligon page 10)

581. Although Bronx District Attorney Jeanette Rucker sent memos to NYPD Police Commanders and police officials expressing her concerns of the reasons police were providing for stopping innocent individuals outside Clean Hall building, her concerns were unheeded.

582. Dr. Fagan concluded that 63% of "the recorded trespass stops outside the Clean Halls building in the Bronx in 2011, where no indoor behavior was observed were not based on any articulated reasonable suspicion." (Ligon at 67)

583. Although Barrington Green's case does not involve a Clean Halls Building or fall within the TAP program, it does fall within the umbrella fo the defendants' over aggressive policing policies directed at minorities and at minority communities, and their failure to adequately train and supervise its officers in the laws and parameters set by the 4th Amendment. The actions taken by the officers on April 7, 2012 as will set forth herein, resulting in Barrington Green's constitutional violations, stems in large measure, from the policies, customs and procedures set by the defendants, including the stop and frisk program, the inadequate training and supervision of, and by its officers, and/or the pressures exerted by the City, NYPD and/or Kelly to meet performance standards measured by the number of arrests made and summons issued.

584. Upon information and belief, said Stop and Frisk program was established, maintained, supervised, continued, applied and monitored to meet

arrest/summons, numbers/quotas and to establish and/or meet performance standards.

585. Upon information and belief, the NYPD, City and/or Kelly established performance standards which demanded, or resulted in increased levels of stops and frisks.

586. According to the 10/17/11 Police Officer Performance Objectives Operation Order, Commissioner Kelly directed all commands that "Department managers can and must set performance goals" relating to the "issuance of summons, the stopping and questioning of suspicious individuals, and the arrests of criminals."

587. The same Operation Order stated "uniformed members.....Who do not demonstrate activities...or who fail engage in proactive activities..will be evaluated accordingly and their assignments re-assessed."

588. In the Floyd case, Justice Scheindlin cited evidence of a quota system which included a minimum number of monthly "stops." Said evidence includes:

1) the deposition of Inspector Dwayne Montgomery, Commander of the 28th Precinct, who testified that he expected his officers to conduct a minimum of 2.3 stop and frisks per month and used that number "as a way of just gauging whether or not they were doing their job." Floyd at 20.

2) Police Officer Adhyl Polanco of the 41st Precinct testified that his commanding officers announced specific quotas for arrests and summons. He further testified that officers were threatened with reduced overtime or reassigned for failure to meet quotas.

3) Police Officer Adrian Schoolcraft recorded all roll calls at the 81st Precinct where supervisors were yelling and instructing officers to conduct unlawful stops and arrest to meet higher performance numbers. This order was coming down "the chain of command." The statements were made by Lt. Delafuents, Deputy Inspector Mauriello and Sgt. Stukes and cites the instructions of Chief of the Transportation Bureau of the City of New York Police Department, Michael Scagnelli.

4) Police Officer Luis Pichardo of the 28th Precinct offered testimony that his supervisors imposed a five summons per tour quota.

589. The acts of police officers who violate the civil and constitutional rights of the citizens of New York routinely go unreported by fellow police officers, not investigated by their superior officers, and consequently their acts, actions, omissions go unpunished. Failure to intervene and report is the norm, not the exception. In none of the case cited in paragraph 106 a-w above did the police officers intervene in the face of misconduct; nor did they report the misconduct of their fellow officers or receive any punishment for having failed to do so. Consequently, the acts of police officers in which they use excessive force, engage in racial profiling, making or file false arrests and reports, make warrantless entry into citizens' homes, etc., are condoned by other officers present, their supervisors, precinct commanders, including Assistant Chief Purtell and the NYPD Commissioner Kelly.

590. The City's and/or NYPD tolerance for brutality, excessive force, illegal and/or retaliatory arrests, and their emphasis to "come down hard on quality of life infractions", leads to a systemic practice and policy wherein City officials seem fairly tolerant, both outwardly and inwardly of police brutality, silence in the face of brutality and/or illegal stops, frisks, searches, seizures and/or arrests, warrantless entry into citizens' homes and engage in arrest quotas. A systemic practice where officers who report said misconduct are not viewed as "good cops", but rather as outcasts and snitches and are isolated, ostracized and often transferred, thereby perpetuating the illegal conduct of the officers.

591. Some instances where officers were treated as outcasts for reporting misconduct and/or an arrest/summons quota system are as follows:

a. the existence of arrest quotas, summons quotas and approval of illegal stops and arrests have been exposed by Police Officer Adrian Schoolcraft in a separate lawsuit which was cited by Justice Scheindlin, in David Floyd et al v. The City of New York, 08 Civ 1034.

b. Justice Scheindlin cited the deposition of Police Officer Adhyl Polanco of the 41st precinct, stating that commanding officers set specific quotas for arrests and summons and for stop and frisks (UF-250's), and threatened to reduce overtime for officers who failed to perform well and to reassign those who fail to meet quotas to less desirable posts.

c. According to secretly taped recorded conversations made by Schoolcraft, a Lieutenant, a Deputy Inspector and a Chief of the Division of Transportation all can be heard encouraging/demanding increased stops, summons, detentions and/or arrests.

d. Police Officer Craig Matthews of the 42nd precinct filed a lawsuit against the NYPD claiming the existence of a quota system and a systematic retaliation and harassment to those who did not comply.

e. Recently, retired Detective James Griffin, filed a lawsuit claiming that in the NYPD there exists a culture wherein officers who report corruption, face harassment and a hostile work environment and this conduct was tolerated by supervisors within the NYPD.

592. Upon information and belief, arrest quotas and summons quotas, often couched by the defendants as "performance standards", are ingrained as a part of a NYPD officer's job, leading to shortcuts and violations of citizen's constitutional rights to meet those so called performance levels.

593. In the matter of Dominguez v. City of New York, a lawsuit pending in Bronx Supreme Court under Index #305140-2011, a named defendant, Sgt. Karl Kindred of the Bronx Narcotics Division and a supervisor, stated under oath on April 19, 2013 at his deposition, see P. 32-37, **see Exhibit One,** that "all individuals who were merely present in an apartment would be arrested if it was pursuant to a search warrant", which clearly is not the law.

594. Further evidence of a pattern, policy or custom is evidenced by a recent New York Daily News article dated May 19, 2013, documenting rampant police

abuse where the officers involved were not disciplined in any meaningful manner but rather promoted to a higher position, see **Exhibit Two.**

AS AND FOR A FIFTIETH CAUSE OF ACTION

595. At all times mentioned, Plaintiff **MARK GOCUL** was a resident of Westchester County, City and State of New York.

596. At all times mentioned, Defendant **CITY OF NEW YORK,** was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.

597. On or about the 12th day of December, 2012 and within ninety (90)days after the claim herein arose, the Plaintiff served a Notice of Claim in writing sworn to on their behalf upon the Defendant CITY OF NEW YORK, by delivering a copy thereof in duplicate to the officer designated to receive such process personally, which Notice of Claim advised the Defendant CITY OF NEW YORK, of the nature, place, time and manner in which the claim arose, the items of damage and injuries sustained so far as was then determinable.

598. At least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety (90) days after the happening of the event upon which the claims are based.

599. The Plaintiff has complied with the request of the municipal Defendant's for an oral examination pursuant to Section 50-H of the General Municipal Law

and/or the Public Authorities Law and/or no such request was made within the applicable period.

600. Upon information and belief, at all times mentioned, Defendants **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, **THE CITY OF NEW YORK.**

601. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants jointly and severally in their capacity as police officers, wrongfully touched, grabbed, handcuffed and seized the Plaintiff **MARK GOCUL,** in an excessive manner about his person, causing him physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A FIFTY-FIRST CAUSE OF ACTION

602. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "7" with full force and effect as though set forth at length herein.

603. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally did place Plaintiff **MARK GOCUL** in imminent fear of

physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A FIFTY-SECOND CAUSE OF ACTION

604. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "603" with full force and effect as though set forth at length herein.

605. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and unlawfully arrested the Plaintiff, restrained him and his liberty and then took him into custody to a police station in the County of the Bronx and there charged him with the crimes on Docket No. 2012BX021158. The Plaintiff was thereafter held in custody over the course of approximately three (3) days until he was released on his own recognizance. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FIFTY-THIRD CAUSE OF ACTION

606. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "605" with full force and effect as though set forth at length herein.

607. On or about April 7, 2012, at approximately 2:00 P.M. in the vicinity of 4521 Byron Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any valid warrant, order or other legal process and without any legal right, wrongfully and unlawfully imprisoned the Plaintiff, restrained him and his liberty and then took him into custody and causing him to be incarcerated as a detainee in the City of New York's Correctional Facility. The Plaintiff was thereafter held in custody over the course of approximately three (3) days before he was released. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FIFTY-FOURTH CAUSE OF ACTION

608. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "607" with full force and effect as though set forth at length herein.

609. Upon information and belief, on or about April 7, 2012 and from that time until the dismissal of charges on or about September 25, 2012 which was a favorable termination for the accused by the Honorable Judge presiding at, Bronx County Supreme Court, Defendants **CITY OF NEW YORK, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,** deliberately and maliciously prosecuted Plaintiff **MARK GOCUL,** an innocent man without any probable cause whatsoever, by filing or causing a criminal court complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of falsely

accusing the plaintiff of violations of the criminal laws of the State of New York.

610. The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiff and due to the absence of probable cause malice can be inferred.

611. The commencement of these criminal proceedings under Docket No. 2012BX021158 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.

612. As a result of the malicious prosecution, Plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearances to defend his liberty against these unjust charges.

AS AND FOR A FIFTY-FIFTH CAUSE OF ACTION

(This Cause of action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

613. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "612" as it set forth at length herein.

614. Defendants **DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996** were at all times relevant, duly appointed and acting officers of the City of New York Police Department.

615. At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.

616. Plaintiff **MARK GOCUL** is and at all times relevant herein, a citizen of the United States and a resident of Westchester County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

617. The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.

618. On or about April 7, 2012, the Defendants, armed police, while effectuating the seizure of the Plaintiff **MARK GOCUL**, did search, seize, assault and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

619. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

a. Freedom from assault to his person;

b. Freedom from battery to his person;

c. Freedom from illegal search and seizure;

d. Freedom from false arrest;

e. Freedom from malicious prosecution;

f. Freedom from the use of excessive force during the arrest process;

g. Freedom from unlawful imprisonment.

620. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights under the fourth and fourteenth amendments of the United States Constitution.

621. The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A FIFTY-SIXTH CAUSE OF ACTION

622. Plaintiff incorporates, repeats and re-alleges all of the allegations contained in Paragraphs "1" through "621" with full force and effect as though set forth at length herein. (This Cause of Action applies to the City of New York and the officer sued in their official capacity should be characterized as a "Monell" claim.)

623. Defendant **CITY OF NEW YORK** and **COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY.** has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.

624. **THE CITY OF NEW YORK** was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the

consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest a search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should not he used where a criminal defendant is not resisting arrest.

625. **THE CITY OF NEW YORK** is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:

1. Probable cause must be present before an individual such as the Plaintiff herein can he arrested.
2. Excessive force cannot be used against an individual who does not physically resist arrest.
3. An individual who sustains physical injury at the hands of the police during the arrest process should receive prompt medical attention.
4. Police cannot stop, seize or search individuals as the Plaintiff herein, when they merely see two denizens of the City of New York having a conversation, place their hands close to each other, consistent with greeting an individuals give each other, where no United States currency or another object has been exchanged for the item nor have the police seen whether the object supposedly passed from on e individual was an illegal object and when after the search and seizure no contraband is seen or taken from the person of the plaintiff.

City population). Thus, we submit that the defendant's stop and frisk policy us heavily and disproportionately focused on youths of New York City, especially minority youths.

635. Statistical evidence further shows that pursuant to the NYPD stop and frisk policies and procedures, a great majority of civilians who were subjected to stop, question and/or frisk had not committed any crime, and that the NYPD engaged in said actions without reasonable suspicions of criminality. Furthermore, statistics show that blacks and Latinos were disproportionately targeted for stops, summons, arrests and excessive use of force.

636. Upon information and belief, it was statistically revealed that of the reported stops and frisks conducted by the NYPD between 2004 and 2009, officers' "suspicions" of criminality was wrong nearly 9 out of 10 times.

637. Upon information and belief, the City, NYPD, and/or Kelly were long aware of the racial disparity of police stop and frisks. In 2007, the NYPD commissioned a study through The Rand Center on Quality Policing to study their stop, question and frisk patterns and practices. The study found that of the half a million persons stopped only 11% were Caucasians, 53% black and 219% Hispanic. Moreover, of the people that were stopped, 45% of Black and Hispanics that were stopped were frisked, while 29% of Caucasians that were stopped were frisked. Yet, when frisked, white suspects were 70% likelier than black suspects to have a weapon on them. (Rand study analysis of racial disparity in the New York Police Department Stop, Question and Frisk Practice, page xi)

638. The Rand report found that black pedestrians were stopped at a rate 50% greater than their representation in the residential census. RAND report page xi. The Rand report made several recommendations to the NYPD to "improve interactions between police and pedestrians during stops and to improve the accuracy of the data collected during pedestrian stops" (Rand page xv). Some of the many recommendations proposed include: review boroughs with the largest racial disparities in stop outcomes; record the reason(s) that the need to use force was used; monitor radio communications to make sure stop and frisk forms are being filled out; and identify, flag and investigate officers with out of the ordinary stop patterns. Finally, the report found "some correction in training during new officers' initial days on the street might be in order, particularly for any evaluation of Operation Impact practices" (Rand page xvi).

639. Upon information and belief, the defendants did not adopt these suggestions, and as of April 7, 2012, still continued to stop, frisk, search and use force on minorities in a disproportionate manner and target their stop and frisk polices in predominately non-white precincts within the City of New York.

640. Upon information and belief, police officers routinely engage in "stops" and then attempt to justify the stop and/or frisk, when in fact the basis for the stop or stop and frisk was pretextual and/or discriminatory in nature. Upon information and belief, frisks and/or searches are conducted without justifiable reasons.

641. According to a statistical analysis conducted by Colombia University Professor Jeffrey Fagan, submitted in the Floyd case, police cited (as a reason for stop and frisk) a "suspicious bulge" in 10.4% of all stops, yet a gun was found in .15% of all stops (or 1 out of every 69 persons stopped on suspicion of concealing a weapon). Furtive movements were cited as a reason in more than 50% of all stops.

642. Professor Fagan also statistically found that "NYPD stop and frisks are significantly more frequent for Black and Hispanic residents than they are for White residents, even when adjusting for local crime rates, racial composition of the local population....." Floyd at 29. He further statistically found that when stopped Blacks and Latinos are treated more harshly than Whites stopped on suspicion fo similar criminal activity. The term Black, White and Latinos are included within the NYPD reports and are adopted herein.

643. Analyzed date of the Stop and Frisk Program revealed in a report released by the Center for Constitutional Rights in 2012 found:

1) Analysis of the information recorded by police officers themselves in their stop and frisk reports indicates that more than 95,000 stops lacked reasonable, articulable suspicion and this violated the Fourth Amendment.

2) The NYPD continues to frequently and indiscriminately use the highly subjective and constitutionally questionable categories of "high crime area" and "furtive movements". "High crime area" is checked off in more than 60% of all stops. A comparison of actual crime rates to the claim that a stop was in a "high crime area" reveals that this factor was cited roughly the

same rate regardless of the crime rate. "Furtive movement" was also checked in a majority of stops, 53% of them. Here, too, there was no correlation between the frequency of this stated reason for a stop and actual crime rates. Both the frequency of these classifications and their complete absence of any relationship to actual crime rates suggest strongly that they are not legitimate indicators or reasonable, articulable suspicion.

3) Only 6% of stops result in arrest, an extraordinarily small number given that stops are legally supposed to be based on reasonable, articulable suspicion. The rates of seizure of weapons or contraband are minuscule - .12% of stops yield gun seizures and 1.8% contraband - and are lower than the seizure rates of random stops.

644. Since 2009 the number of Stop and Frisks has dramatically risen. In 2010, there were a reported 601,055 stops.

645. For the calendar year 2011, New York City precincts reported 685,724 "stops." Of that total number 350,743 were categorized as stops of persons of black descent and 223,650 were of Latino descent (this does not include the number of individuals who were not categorized and who may be of black or Latino descent). Thus, 83.7% of individuals stopped were categorized as "minorities." Of the 381,704 person frisked in 2011, 330,638 (89.2%) were black and Latinos and 27,341 (7.4%) were whites.

646. According to a 2010 census, blacks make up 25% of the City's population, Latinos 29% and whites 33%.

647. Statistical data also revealed that stop and frisk practices, when measured against the composition of the precinct population, was employed at a much

greater frequency in precincts whose population was composed predominantly of minorities. In 2011, the 73rd, 23rd, 81st, 41st and 25th precincts (Brownsville, East Harlem South, Bed Stuyvessant East, Hunts Point and East Harlem North) stopped 29.1%, 23.9%, 21.8%, 21.7% and 20.9% of their populations respectively. Meanwhile, in the Upper East Side (19th Pct.), Bensonhurst (62nd pct.), Bay Ridge (68th pct.), Totenville (123rd pct.) and Borough Park (66th pct.), each predominantly white precincts, residents were stopped at a rate of 2.5%, 2.4%, 2.3%, 2.1% and 2.0% of their populations. The same pattern holds true when the stops resulted in frisks. The top 5 precincts reporting the most number of frisks were minority populated precincts, such as the 75th, 73rd, 44th, 115th and 40th, while the least amount of frisks were conducted in white populated precincts such as the 94th, 18th, 123rdm 17th and 22nd.

648. Even in traditionally white neighborhoods, such as the 17th pct. (East Side, Manhattan), black and Latino residents are stopped at a disproportionate rate when compared to its white citizens who reside within the same pct. To illustrate the point, in 2011, 71.4% of all stops made in Kipps Bay/Murray Hill, NY, were made against blacks and Latinos. Yet, they account for only 7.8% of the total precinct population. In Greenwich Village, where blacks and Latinos comprise only 8% of the precinct, they accounted for 76.6% of all stops. (New York Civil Liberties Union Stop and Frisk 2011 Report) The same reports also cites the additional precincts engaging in the same practice: 19th, 123rd, 1st, 61st, 11th, 20th, 13th and 62nd.

649. It was further reported that at least one act of force was used in 148,079 "stops" (or in 21.5% of the total number of stops in 2011), with 76,483 reported the use of force against blacks, (21.8% of all stops of the 350,743 stops made against them in 2011). It should be noted that 51.7% of all "reported" instances of use of force by New York City Police were made against persons that the NYPD categorized as "black". In 2011, blacks and Latinos had force used against them 129,590 times as compared to white, 9,765 times.

650. To illustrate the prevalence of the use of force within the context of the "Stop and Frisk" program, it should be noted that the number of stops in which at least one act of force was "reported" as being used (148,079 times) exceeded the total number of summons (41,215) and arrests (40,883) made from reported "stops" in New York City in 2011 (total 82,098). Thus, it was 1.8 more times likely that force was used by police during a stop and frisk encounter than it was that said encounter resulted in an arrest or a summons being issued.

651. Upon information and belief, the City and Kelly and/or NYPD, either condoned the use of stop and frisk program, or the use of force in conjunction with it, as "means to an end", or acted with deliberate indifference to the knowledge that it was being utilized in that manner in a vast number of cases where there was no reasonable suspicion or no evidence of any criminality that would justify the use of any force, or force to the degree it was used, much less the initial stop and frisk.

652. The City, and/or Kelly sought to justify the tremendous increase in the stop and frisk program by claiming that the program helped rid the City of illegal guns. Yet, that contention or rationale is not statistically borne out. Nor would it serve as justification to violate the laws of the United States Constitution or the State of New York. In 2003, the NYPD conducted 160,851 stops and recovered 604 guns. In 2011, the NYPD conducted 685,724 stops, or an additional 524,873 stops when measured against 2003 statistics. Yet they only recovered and extra 176 more illegal guns as, or a total of 780. That computes to a .0003% success rate for the additional stops made.

653. Upon information and belief, the City and/or Kelly acted with deliberate indifference to: statistical evidence that enforcement or application of the "Stop and Frisk" program was highly unlikely to result in an arrest, a summons or the recovery of weapons or contraband. (Weapons were recovered in 1.14% of the total number of stops reported in 2011.)

654. In fact, the City and/or Kelly were deliberately indifferent to statistical evidence/reports/information/complaints and other information that they possessed that indicated that: the stop and frisk program was targeting minorities, targeting minority communities or precincts; evidence that the stop and frisk program was racially biased; the program was targeting youths; officers were using force, including unnecessary or excessive force on carrying out this program; the program was being unconstitutionally applied; the training police officers received was inadequate, and that there was a need for proper training in the academy, for supplemental training in service, and for in-field supervision and training in the laws of the 4th

Amendment, the legal use of force, for reasonable suspicion and general police guidelines and search and seizure laws and parameters.

655. Upon information and belief, the City and/or Kelly, acted with deliberate indifference that the aforementioned issues would, could and did result in the countless violations of constitutional rights of its citizenry.

656. Upon information and belief, prior to April 7, 2012, the City and/Kelly, failed to require that precinct commanders audit each officer worksheets, and failed to maintain or develop a system or methodology for identifying and tracking police officers who receive a baseline number of civilian complaints related to improper stops, improper frisks or searches, unnecessary or excessive use of force, threats, illegal entry into citizen's homes and/or discourtesy.

657. The stop and frisk program especially targeted minority youths in the 14-24 age range.

658. Although Blacks and Latinos males between the ages of 14 and 24 account for only 4.7% of the City's population, they accounted for 41.6% of all stops in 2011. White youths in the same age group account for 2% of the City's population and were responsible for only 3.8% of the total number of stops. In 2011, young black men between the ages of 14 and 24 were "reported" being stopped 168,126 times, which exceeded the total number of young black men in this age range who reside in New York City (158,406).

659. Minority youths were particularly vulnerable not only to stops, or stop and frisks, but more alarmingly to the use of force by the NYPD. As reported in Growing Up Police in the Age of Aggressive Police Policies, by Brett G.

Stoudt, Michelle Fine and Madeline Foz, in New York Law School Review, Volume 56, 2011/12, youths who were stopped during the two year period if 2008-2009 were frisked 61.3% of the time, they were arrested 5.4% of the time, issued summons 5.1% of the time and weapons were found on the youths 1.2% of the time (most if the weapons recovered were knives, guns comprised only 17% of the total weapons recovered). Yet, it was reported that force was used against the same youths 26.3% of the time, or approximately 2 ½ times more than the likelihood of being arrested or issued a summons. It was also found that reports of youths carrying a suspicious bulge or object, actions indicative of engaging in a violent crime, or an object in plain view 10.5%, 9.6% and 1.7% respectively, were highly unreliable and unlikely to lead to the recovery of an illicit gun. The total number reported (using the aforementioned criteria) of stop and frisks of youths were 90,756, yet the total illegal guns recovered (under any basis or criteria for reasonable suspicion) was 831 during that period, or .009%.

660. In all, 416,350 youths (381,578 or 91.6% were males and 218,260 of the total youths stopped (52.4%) were categorized as black or African American) were stopped during the 2008-2009 and 405,898 (97.5%) of them were free of weapons or contraband. Only 10% of the total youths stopped were white youths and only 7% female from 2008-2009.

661. Upon information and belief, the "stop and frisk" program: targeted or was applied, in a discriminatory manner against minorities; was applied or enforced in predominately minority communities; was age biased against youths, age 14-24; and was gender biased (against males) as well.

662. These youths were also subjected to the unnecessary use of force. Stodt, Fine and Fox further reported that of the 109,499 times that force was used against youths in 2008 and 2009, the police in 2,142 instances, (more than twice the number if times that any weapon was recovered) drew their firearm and/or pointed their firearm at a suspect. In the other 107,357 cases where force was reportedly used, it included hands on suspect, placing the suspect on the ground or against a wall/car, the use of a baton or pepper spray among other things.

663. The racial, gender and age disparity of these statistics could not and should not have been ignored.

664. Upon information and belief, the NYPD issued a Department Operations Order in 2002 prohibiting racial profiling. Nevertheless, upon information and belief, racial profiling continued to be utilized as a policing tool of the NYPD as of April 7, 2012. Moreover, there was no Operations Order or directive prohibiting any type of gender or age bias application of policing practices in place on that date.

665. Police Commissioner Kelly has stated that the Stop and Frisk Program, and the "stops" thereunder, serve as a deterrent to criminal activity, which includes the criminal possession of a weapon. Therefore, he endorsed, and upon information and belief, continues to endorse said program and have it applied by the police officers under his command, although said program was being used to stop and stop and frisk citizens without reasonable suspicion, and in a racially biased manner.

666. Upon information and belief, this Stop and Frisk program was in effect on April 7, 2012 and was trained, implemented and overseen throughout the City of New York and all precincts therein, including the NBBX by Det. Bryan Pitts and Det. Gena Jonas.

667. While the aforementioned statistics were compiled for all New York City precincts, the statistics are particularly alarming for the Bronx, where the plaintiff resides.

668. The most common reason used by the NYPD to justify stopping civilians of New York City, almost 90% of whom had committed no crime or violation, falls predominantly within the category "furtive movements." In 2011, that reason was given in 51.3% of the total number of stops.

669. However upon information and belief, the City and/or Kelly, either failed to train officers what constitutes "furtive movements", or acted with deliberate indifference to the need enhance or supplement training in the area; they acted with deliberate indifference to the unequal application of stop and frisk procedures when "furtive movements" are committed by "whites", not resulting in "stops", while the same movements when committed by minorities resulted in "stops"; and they acted deliberate indifference to the knowledge that "furtive movements" was not a statistically reliable marker of possession of contraband, weapon, or that a person has committed, or is about to commit a crime. In sum, "furtive movements" has been statistically proven to be unreliable to establish reasonable suspicion to justify a stop, or a stop, question and frisk.

670. The aforementioned statistical proof shows that said reasons or rationale for said stops were inaccurate, unreliable, untrue or without statistical probability of success.

671. Further evidence of the defendants' over aggressive stop and frisk policies which targeted minority communities, such as the Wakefield section of the Bronx, can be found in the Trespass Affidavit Program, formerly known as Operation Clean Halls. In Ligon v. City of New York, No. 12, Civ 2274, plaintiff brought an action alleging that the NYPD's trespass stops outside TAP buildings are often without reasonable suspicion, violating the 4th Amendment rights. Justice Scheinldin in a written decision filed January 8, 2013, agreed.

672. In her decision, Justice Scheindlin stated "while it may be difficult to say where, precisely to draw the line between a constitutional and unconstitutional police encounter, such a line exists, and the NYPD has systematically crossed it while making trespass stops outside TAP buildings in the Bronx." (Ligon page 10)

673. Although Bronx District Attorney Jeanette Rucker sent memos to NYPD Police Commanders and police officials expressing her concerns of the reasons police were providing for stopping innocent individuals outside Clean Hall building, her concerns were unheeded.

674. Dr. Fagan concluded that 63% of "the recorded trespass stops outside the Clean Halls building in the Bronx in 2011, where no indoor behavior was observed were not based on any articulated reasonable suspicion." (Ligon at 67)

675. Although Mark Gocul's case does not involve a Clean Halls Building or fall within the TAP program, it does fall within the umbrella fo the defendants' over aggressive policing policies directed at minorities and at minority communities, and their failure to adequately train and supervise its officers in the laws and parameters set by the 4th Amendment. The actions taken by the officers on April 7, 2012 as will set forth herein, resulting in Sidiki Anderson's constitutional violations, stems in large measure, from the policies, customs and procedures set by the defendants, including the stop and frisk program, the inadequate training and supervision of, and by its officers, and/or the pressures exerted by the City, NYPD and/or Kelly to meet performance standards measured by the number of arrests made and summons issued.

676. Upon information and belief, said Stop and Frisk program was established, maintained, supervised, continued, applied and monitored to meet arrest/summons, numbers/quotas and to establish and/or meet performance standards.

677. Upon information and belief, the NYPD, City and/or Kelly established performance standards which demanded, or resulted in increased levels of stops and frisks.

678. According to the 10/17/11 Police Officer Performance Objectives Operation Order, Commissioner Kelly directed all commands that "Department managers can and must set performance goals" relating to the "issuance of summons, the stopping and questioning of suspicious individuals, and the arrests of criminals."

679. The same Operation Order stated "uniformed members.....Who do not demonstrate activities...or who fail engage in proactive activities..will be evaluated accordingly and their assignments re-assessed."

680. In the Floyd case, Justice Scheindlin cited evidence of a quota system which included a minimum number of monthly "stops." Said evidence includes:

1) the deposition of Inspector Dwayne Montgomery, Commander of the 28th Precinct, who testified that he expected his officers to conduct a minimum of 2.3 stop and frisks per month and used that number "as a way of just gauging whether or not they were doing their job." Floyd at 20.

2) Police Officer Adhyl Polanco of the 41st Precinct testified that his commanding officers announced specific quotas for arrests and summons. He further testified that officers were threatened with reduced overtime or reassigned for failure to meet quotas.

3) Police Officer Adrian Schoolcraft recorded all roll calls at the 81st Precinct where supervisors were yelling and instructing officers to conduct unlawful stops and arrest to meet higher performance numbers. This order was coming down "the chain of command." The statements were made by Lt. Delafuents, Deputy Inspector Mauriello and Sgt. Stukes and cites the instructions of Chief of the Transportation Bureau of the City of New York Police Department, Michael Scagnelli.

4) Police Officer Luis Pichardo of the 28th Precinct offered testimony that his supervisors imposed a five summons per tour quota.

683. Some instances where officers were treated as outcasts for reporting misconduct and/or an arrest/summons quota system are as follows:

a. the existence of arrest quotas, summons quotas and approval of illegal stops and arrests have been exposed by Police Officer Adrian Schoolcraft in a separate lawsuit which was cited by Justice Scheindlin, in David Floyd et al v. The City of New York, 08 Civ 1034.

b. Justice Scheindlin cited the deposition of Police Officer Adhyl Polanco of the 41st precinct, stating that commanding officers set specific quotas for arrests and summons and for stop and frisks (UF-250's), and threatened to reduce overtime for officers who failed to perform well and to reassign those who fail to meet quotas to less desirable posts.

c. According to secretly taped recorded conversations made by Schoolcraft, a Lieutenant, a Deputy Inspector and a Chief of the Division of Transportation all can be heard encouraging/demanding increased stops, summons, detentions and/or arrests.

d. Police Officer Craig Matthews of the 42nd precinct filed a lawsuit against the NYPD claiming the existence of a quota system and a systematic retaliation and harassment to those who did not comply.

e. Recently, retired Detective James Griffin, filed a lawsuit claiming that in the NYPD there exists a culture wherein officers who report corruption, face harassment and a hostile work environment and this conduct was tolerated by supervisors within the NYPD.

WHEREFORE, Plaintiff demands judgment against the Defendants, together with the costs and disbursements of this action in the amount of damages greater than the jurisdictional limit of any lower court where otherwise have jurisdiction, together with attorneys' fees and costs for bringing this case and punitive damages.

Dated: Bayside, New York
September 19, 2013

Yours, etc.

PAPA, DEPAOLA AND BROUNSTEIN

BY: JOHN R. DEPAOLA
Attorneys for Plaintiff
42-40 Bell Boulevard Suite 500
Bayside, New York 11361
(718) 281-4000

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No.
Purchased _____

----------X

SADIKI ANDERSON, WALLFORD GARCIA, DUDLEY CARTER, ANDRE WALTER, DERRICK MOULTON, DANE OMAR SPENCER, BARRINGTON GREEN AND MARK GOCUL,

VERIFICATION

Plaintiffs,

-against-

THE CITY OF NEW YORK, COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF NBBX, SHIELD #4996,

Defendants

----------X

I, **JOHN R. DEPAOLA,** an attorney admitted to practice in the courts of New York State, state that I am a member of the firm of **PAPA, DEPAOLA AND BROUNSTEIN,** the attorneys of record for Plaintiffs in the within action; I have read the foregoing and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by Plaintiff is because Plaintiff resides outside the county where deponent maintains his office.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: Bayside, New York
September 19, 2013

JOHN R. DEPAOLA

EXHIBIT ONE

he learned in the NYPD.

MR. KOUROUPAS: Well, he could just -- I mean, I just wanted to make it more fair for you.

BY MR. KOUROUPAS:

Q. As part of proper procedure you were taught, if you have a search warrant and you find contraband somewhere in the apartment, let's say as in this case in bedroom one, does that give you a right to arrest everyone in the location?

A. Yes.

Q. If someone -- if you found someone in that apartment that was just visiting, okay, and by that I mean -- withdrawn.

When you go into an apartment, do you have your fellow officers go through the apartment and look for mail or other things that will show ownership to the people found in there?

A. Yes.

Q. Okay. And it's important to know who lives there and who doesn't, correct?

A. Yes.

Q. If someone's in that apartment just visiting and you find contraband in one bedroom and

that person is not in that bedroom, can you arrest that person just because you found contraband in the location that person's in in that apartment?

A. Repeat the question again.

Q. Yes, sir.

Where -- let me ask a different question.

Where was Wally Dominguez in that apartment?

A. He was in the kitchen I believe.

Q. Okay. Did you do anything whatsoever to determine who resided in that bedroom where the contraband was found?

A. No.

Q. Okay. Now, in the NYPD, were you ever taught that there's different ways an individual can be in possession of contraband? For instance, actual possession, I hold this pen, if this was contraband, I'm in actual possession. You find it in my pocket, that's a way I can be in possession, correct?

A. Yes, actual position.

Q. Yeah. Or if you see me having dominion and control over this pen and then I toss it, I'm still in possession, correct?

A. Yeah, that would still be actual

possession.

Q. There's other ways, like if I'm in a room with contraband and it's in plain view, correct?

A. Yes.

Q. Or there's different presumptions. For instance, if you're in a car and the object is in a common area, that other people could be in statutory constructive possession of that contraband in that car, correct?

A. Yes.

Q. Well, in an apartment, when you have a search warrant and you find all the contraband in one bedroom, does that give you the right to arrest everyone in the rest of the apartment?

A. Yes.

Q. Okay. So it doesn't matter -- well, withdrawn.

Were you ever told that the law in New York is that mere presence in an apartment where contraband is found is not enough to make an arrest? Were you ever told that?

MS. HEYISON: Objection.

You can answer.

THE WITNESS: You're saying if there's

contraband in the apartment, like in this instance Cocaine --

BY MR. KOUROUPAS:

Q. Yeah.

A. -- am I allowed to arrest everybody in the apartment?

Q. Yes.

A. Yes, I am.

Q. So -- and I'm stating it more specifically. I'm not trying to trick you.

Does mere presence, a person just happened to be in the living room when you execute a warrant and find contraband in one bedroom, that's -- you still have enough to arrest that person if you choose to, correct?

MS. HEYISON: Objection.

You can answer.

THE WITNESS: Pursuant to a search warrant, yes.

BY MR. KOUROUPAS:

Q. Okay. Were you ever told that each individual who you decide to arrest inside an apartment has -- you either have to have knowledge -- withdrawn.

If you find an individual in the

apartment, like for instance Wally Dominguez --

A. Yes.

Q. Did you have any information that he lived there?

A. Prior? No.

Q. At the time did you find any information that he lived there?

A. No. I would have to see the DD-5s, but at this -- from what I remember, no.

Q. Okay. What information do you have whatsoever to link Wally Dominguez to the bedroom where the contraband was found?

A. None.

Q. How can Wally Dominguez be in possession of contraband in a different room?

MS. HEYISON: Objection.

You can answer.

THE WITNESS: He was in the apartment.

BY MR. KOUROUPAS:

Q. Okay. So --

A. Any person in that apartment could have had possession of that contraband.

MS. HEYISON: Just listen to his question.

BY MR. KOUROUPAS:

Q. Now, if someone let's say had that bedroom -- withdrawn.

Did you know whose bedroom that was where you found all the contraband in?

A. No.

Q. Did you do any analysis whatsoever to see if the person who had that bedroom possessed dominion and control over those items and excluded all others?

A. No.

Q. Did you ever consider doing that analysis in deciding whether to arrest Wally Dominguez?

MS. HEYISON: Objection.

THE WITNESS: No.

BY MR. KOUROUPAS:

Q. Do you know -- and again, I'll allow you, sir, to read your paperwork. Do you know if anything was in plain view?

A. I would have to look at the vouchers. It appears everything was in the book bag.

Q. Okay. So would it be fair to say, Sergeant, that nothing was in plain view?

MS. HEYISON: Objection.

THE WITNESS: From what I remember and

EXHIBIT TWO

DAILY NEWS

BROOKLYN

Repeated charges of illegal searches, violence, racial profiling, racial slurs and intimidation against Lt. Daniel Sbarra and his team have cost the city more than $1.5 million in settlements

Victims say Sbarra is a 'ticking time bomb' as the Brooklyn North Narcotics lieutenant is involved in 15 lawsuits. The NYPD says charges are meritless and that narcs are often targets

BY ROCCO PARASCANDOLA , JOHN MARZULLI , BARRY PADDOCK AND DAREH GREGORIAN / NEW YORK DAILY NEWS

PUBLISHED SUNDAY, MAY 19, 2013, 12:01 AM

UPDATED SUNDAY, MAY 19, 2013, 12:01 AM

NEW YORK DAILY NEWS PHOTO ILLUSTRATION

NYPD veteran Daniel Sbarra donned his dress blues on Aug. 2, 2011, and headed to One Police Plaza — where Commissioner Raymond Kelly, a promotion and a pay raise awaited.

Kelly shook his hand. And targets of Sbarra's crude and costly police tactics were left shaking their heads. The Brooklyn North Narcotics sergeant with 15 years on the job made lieutenant despite years of on-the-job conduct some say raises serious questions about whether he should still have his badge.

RELATED: OTHER CITIES SAVE MONEY BY TRACKING LAWSUITS AGAINST POLICE

A Daily News investigation of Sbarra and his team of cops exposed repeated charges of illegal searches, unprovoked violence, racial profiling, racial slurs and intimidation that cost the city more than $1.5 million in settlements.

RELATED: FORMER NYPD INSPECTOR DEFENDS UNIT'S ACTIONS

The figure could rise: Nine of the nearly 60 lawsuits filed against the accused rogue cops are still pending.

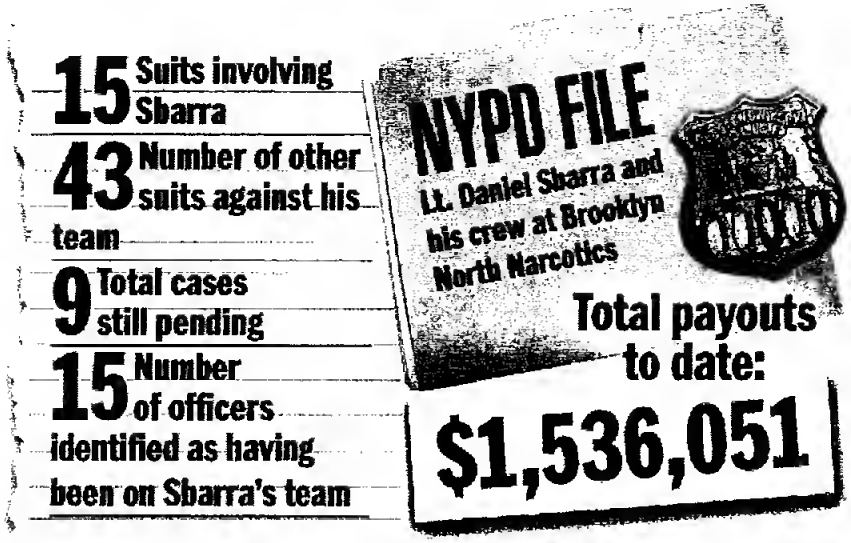
Sbarra is involved in at least 15 of the suits — others involving his team reference various John and Jane Doe officers, whose names typically don't come to light when there are quick settlements. He's been the target of five to 10 Internal Affairs investigations, the lieutenant acknowledged in a deposition. And he's racked up a staggering 30 civilian complaints, among the most on the force.

City settlements involving the 37-year-old married father total nearly $500,000.

Just four months before his promotion, court papers say, Sbarra lost 20 days of vacation after an Internal Affairs probe into an unauthorized search of an ex-Marine's apartment. His union head said Sbarra pleaded guilty to the department charges because he couldn't get promoted until the case was closed out.

Critics say Sbarra's promotion, despite his stunning string of lawsuits and civilian complaints, is indicative of how the NYPD turns a blind eye to the mountains of litigation filed against it every year, and its nonchalant attitude toward police misconduct.

"While his case is extensive, it's also emblematic of the department's lack of aggressive oversight of officers engaged in abusive conduct," said Robert Gangi, director of the Police Reform Organizing Project for the Urban Justice Center.



Gangi said while some criminals and dealers certainly know how to game the system, "when an officer has been sued 15 times, and when there are 30 (Civilian Complaint Review Board) complaints . . . Where there's this much smoke, there's fire."

The News found Sbarra's NYPD record, dating back to 2004, was more jailhouse than precinct house. He cut his teeth in the Bronx before working some of Brooklyn's toughest neighborhoods, including Bedford-Stuyvesant and Bushwick.

"There's a reason Brooklyn North Narcotics are called the 'Body Snatchers,'" said civil rights lawyer Paul Hale, whose client recently won a $75,000 settlement, saying he was twice wrongfully arrested by Sbarra's team. "They don't care if you're innocent or guilty. They just want to make arrests at any cost."
In Sbarra's case, court documents revealed an assortment of jaw-dropping charges. Among the allegations:

- He and a second cop, with black tape over their badge numbers, called a young Brooklyn barbershop owner a "n----" during a traffic stop in Bushwick. Settlement: $19,500, including $1,000 Sbarra had to pay out of his own pocket after the city, in a rare move, refused to represent him. Sbarra was found guilty of departmental charges related to the incident, but "Police Commissioner Raymond Kelly dismissed all charges," Sbarra said in a 2012 deposition.

- He strip-searched a black city paralegal, pulling the man's underwear down with his boot, at Bedford-Stuyvesant's 81st Precinct stationhouse. The suspect was charged with marijuana possession; his lawyer later suggested the drugs were planted. Settlement: $30,000.

- His officers brutally beat a Brooklyn man, yanking out a handful of dreadlocks and bashing his head into a window at the 81st Precinct stationhouse, as the man's 11-year-old son watched in horror. The little boy was recovering from leukemia. Settlement: $50,000.

-He insisted Hale's client, who already lost a tooth in an arrest a year earlier, swallowed drugs on a Bushwick street. The Brooklyn man was left handcuffed to a bed at Woodhull Hospital for seven hours before being released because no drugs were found. Sbarra never followed up on the case with the hospital, even though he is required to by law. Settlement: $75,000.

"He's like a ticking time bomb," said city employee Tanya Reeves, who was arrested then released without charges in 2010 after Sbarra ordered his officers to break down her Bed-Stuy apartment door with a battering ram.

Sbarra declined comment when approached by The News at his home last week.

Despite the piles of allegations and the pricey payouts, the $102,000-a-year lieutenant said in a 2012 deposition he was never disciplined for his then-12 lawsuits, and was promoted four months after he was docked 20 vacation days due to an Internal Affairs investigation.

An NYPD spokesman declined to answer detailed questions about several topics: whether there were concerns about the dozens of suits against Sbarra and his officers; why the Police Department doesn't systematically track and analyze lawsuits involving claims of excessive force; and why Sbarra and his cops were not disciplined after repeated claims of misconduct.

GARY HE

Sbarra has worked tough neighborhoods like the 83rd in Bushwick and the 81st in Bed-Stuy.

The NYPD's top spokesman, Deputy Commissioner Paul Browne, referred questions regarding lawsuits to the city Law Department, which issued a statement.

"Being named in a lawsuit or settlement is not an accurate barometer for evaluating an officer's conduct," the statement said. "For example, an officer who works in high-impact roles, such as narcotics or emergency services, is more likely to be sued in his or her line of duty than an officer in a less confrontational role.

"Therefore, these officers should not be punished for being named in a meritless lawsuit that was initiated because of their particular assignments."

The Law Department issued a followup statement late Friday saying the NYPD does track lawsuits, but refused to elaborate.

Sources said the department only gives cases resulting in payouts of at least $250,000 a mandatory review.

All NYPD settlements come without any admission of wrongdoing by the officers, the department or the city.

Sbarra joined the NYPD in 1997, starting in the crime-plagued 40th Precinct, which includes the Mott Haven neighborhood of the Bronx. He was promoted to sergeant six years later and transferred to Brooklyn North Narcotics.

The News identified nearly five dozen suits filed against Sbarra and 15 members of his team between 2006 and 2011. They were accused of everything from racial profiling to warrantless searches to busting law-abiding citizens on phony charges.Yet when asked in the 2012 deposition how many times he had disciplined officers under him, Sbarra said only twice — because his boss ordered him to.

"That was the only time I've ever written a command discipline in my nine-year career as supervisor," he said.

But the plaintiffs did suffer: Many spent hours or days behind bars before they were released without charges, were injured, or suffered property damage.

One desperate man was ready to sign a plea deal and take a six-month sentence — which would have put him in jail during the birth of his first child — believing his case was hopeless. Records show the case was later dropped because a detective under Sbarra's command gave false information to a grand jury.

NORMAN Y. LONG FOR NEW YORK DAILY NEWS

Tattoed Detective Robert Livingston, who worked with Daniel Sbarra, takes out trash at his Farmingdale home

Kennie Williams, 28, was on the second floor of his uncle's Bed-Stuy brownstone in 2010 when, he says, a group of gun-waving officers dragged him to the basement. Williams was then charged with two other men found in the building basement surroundad by cocaine, marijuana and scales. Detective Robart Livingston testified that Williams was found in the basement, not the second floor. Williams became lost in the legal system and said his repeatad court appearances cost him his job as a Meals on Wheels driver.

He thought about copping a plea: "I was frightened, I was gonna take it, but my lawyer said, 'Don't do it.' " It was good advice. Eighteen months later, the case was thrown out because an assistant district attorney at the Brooklyn DA's office said Livingston's "memory became imprecise" about where Williams was arrested, court documents show.

Williams sued and won a $60,000 settlement.

Speaking outside his house earlier this month, Livingston initially called Williams' defense attorney a liar for putting on record the detective "testified falsely to the grand jury" — insisting, "I never testified to anything in court."

When The News showed him a partial transcript of his Feb. 2008 grand jury testimony, he copped to it, then declined to comment further. But he did say he was not disciplined in the case.
Cases that didn't stick were commonplace in Brooklyn North Narcotics.

The Brooklyn DA's office declined to prosecute more than 1,000 of their arrests in both 2010 and 2011 — about 10% of the borough's total declined prosecutions.

One reason for the high numbers was a "significant amount" of incomplete desk appearance ticket packages submitted by officers, said a source in the district attorney's office. The problem was "addressed" in 2012, and declined prosecutions dropped to 457.

Livingston brushed off lawsuits and misconduct charges as part of the job.

"You have to understand that in narcotics every stop somebody makes a complaint — it's part of the job," Livingston said.

When asked about Sbarra, Livingston defended his old boss.

"It doesn't necessarily mean he was violating anybody, it's part of the job," he said. "You make dozens of stops a day, rather than a patrol cop that makes a few. It's a different line of work."

DESIRE EGAN-CHIN/NEW YORK DAILY NEWS

Kennie Williams nearly copped a plea deal that would've put him in jail for six months. He later sued and won a $60,000 settlement.

Sbarra claimed in a deposition that he was never once summoned by police brass or any superior officer to discuss his litany of legal woes.

Even if the lawsuits result in big payouts, they aren't necessarily noted in an officer's personnel file, where record keeping is "spotty," according to police sources.

The department only subjects cases that cost the city more than $250,000 to a mandatory review — roughly 75 of the thousands of complaints filed against the NYPD every year. And many of those big-ticket payouts stem from traffic accidents, not civil rights abuses.

But attorneys say even a settlement in the low five-figures signifies a solid case.

Meanwhile, the number of lawsuits filed against the NYPD skyrocketed 73% in the 10-year stretch ending in fiscal year 2011. There were 8,882 suits filed in those 12 months, with settlements and awards totaling nearly a billion dollars over a decade.

Lamel Roberson — who filed the first lawsuit naming Sbarra in 2006 — claimed the stocky sergeant and one of his men wore black tape over their badge numbers during a 2004 traffic stop.

Roberson said he was dragged out of his vehicle and pressed against the passenger side door, his arm twisted painfully behind his back, as officers searched his car and repeatedly called him a "n——." Roberson was eventually freed without even a summons.

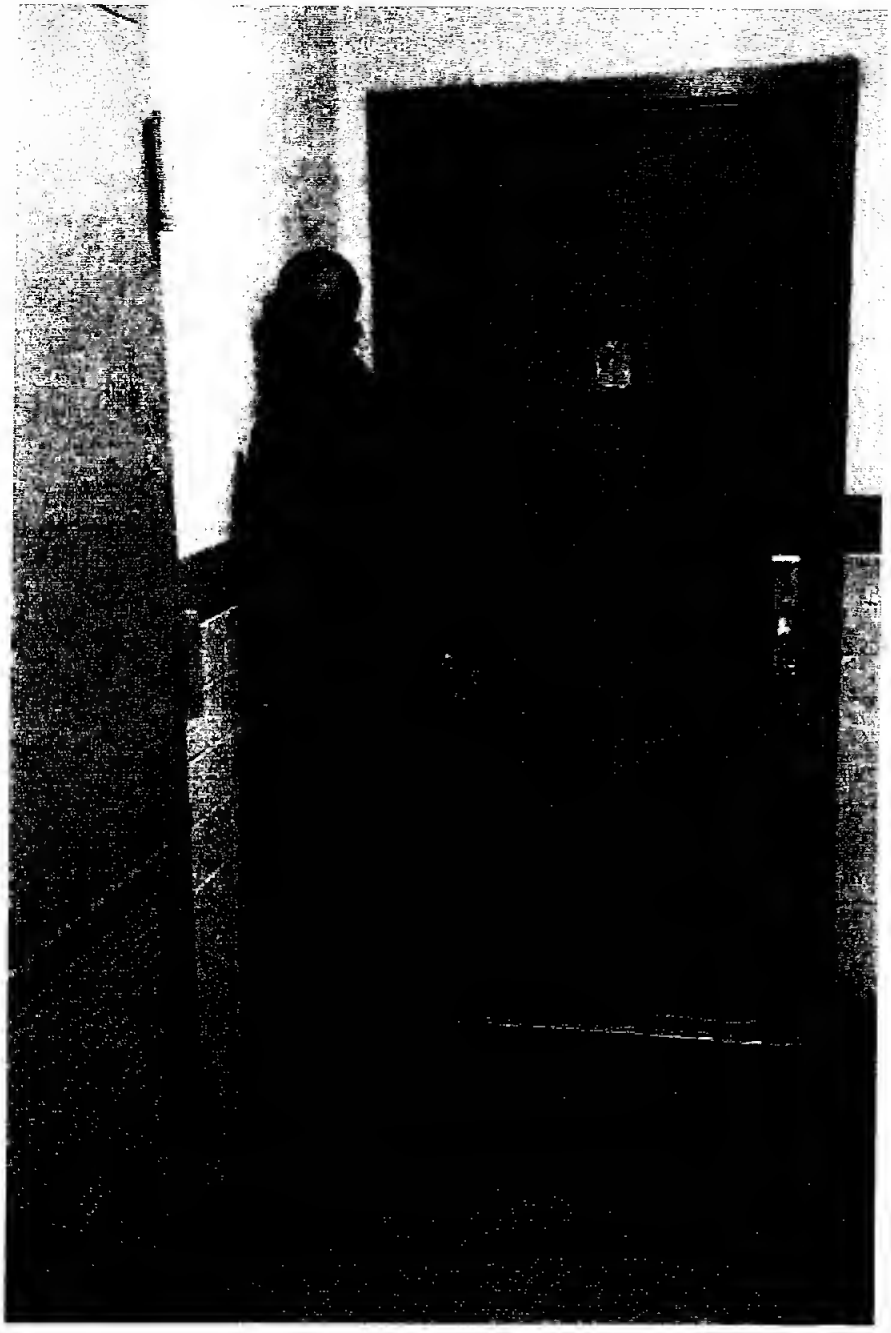
City paralegal Mark Labrew says he was on his way home from work in 2006 when Sbarra and another officer stopped him. Labrew, who is black, said he asked the pair for their names and badge numbers — and they threw him against a gate and frisked him.

Labrew was taken to the 81st Precinct stationhouse, where Labrew says cops started calling him names like "f —— animal" and "retarded monkey." Sbarra strip-searched him, pulling Labrew's underwear down with his boot, according to court records.

Labrew's lawsuit settled for $30,000.

Brooklynite John Spears, 44, says he twice had his civil rights violated by Sbarra's team.
In 2009, Detective Frank Galati and two other officers who worked under Sbarra jumped out of a van and threw him to the ground, knocking out a tooth, his suit claimed. They charged him with tampering with evidence and resisting arrest after a strip search came up empty. The criminal charges were dismissed three months later.

One year later, Spears was walking home with some groceries after work at a VA hospital when Galati stopped him again.



MARK BONIFACIO/NEW YORK DAILY NEWS

Robert Stephens shows how he was handcuffed as police broke down door to his Brooklyn home

"We're going to get you this time," the detective promised, according to court documents. "Where are the drugs?"

"I saw him swallow it," Sbarra said, the court papers show.

Spears was taken to Woodhull Hospital and handcuffed to a bed for seven hours while waiting to get an X-ray of his stomach. No drugs were found, and he was released without charges roughly 15 hours later.

There was Robert Stephens, 56, who recalls heading to a corner bodega in 2010 when five plainclothes officers jumped him.

"Where's it at?" he remembered them howling.

The ex-Marine told The News he was carrying his apartment keys but no ID, so he brought the officers to his home. Instead of using his keys, Sbarra ordered his men to smash their way inside with a battering ram.
The cops ransacked the apartment, held Stephens overnight, and released him without charges.
But this time Internal Affairs began looking at the case, and Sbarra pleaded guilty to a number of departmental charges, including having performed the unauthorized search that cost Sbarra 20 vacation days.

Lou Turco, head of the Lieutenants Benevolent Association, wouldn't discuss the case, but said Sbarra entered the plea because it was standing in the way of his promotion.
Rafael Cruz was pushing a grocery-filled shopping cart in 2009 when he received a text saying his

11-year-old son Eli was at the 81st Precinct stationhouse.

Eli was sitting in a car with his uncle when the man was arrested.
Cruz rushed to the precinct, upset and desperate to see his son — a recovering leukemia patient. Instead, he ran into Sbarra.

"You're gonna have to f—— wait," the sergeant said, according to Cruz. "When I'm ready I'll let you know."

When Cruz demanded to see his son, he said a group of officers descended upon him — punching and kicking the outmanned victim, and then shoving his wife into a wall. The officers ripped out a handful of his dreadlocks and smashed his head into a window, Cruz said. As the dad was led away in cuffs, he saw Eli in another room, crying.

JOHN MOORE/GETTY IMAGES

Police Commissioner Raymond Kelly shook Sbarra's hand when the sergeant was promoted to lieutenant during ceremony at One Police Plaza in 2011.

Cruz, 34, who once served seven years in prison on an assault charge, faced charges including criminal mischief — for breaking the window with his head. He collected a $50,000 settlement from a lawsuit. But the money didn't erase the hard feelings.

Earlier this year, Cruz said Eli was mugged on his way home from school — and had to be coaxed by his dad into speaking to a detective about the attack.

The Civilian Complaint Review Board is a place where citizens can speak freely about problem officers and their misbehavior — though in 2012 only 15% of fully investigated complaints were substantiated.

Sbarra has been named in 30 CCRB complaints, said Turco. Twenty-eight came as a sergeant and four were substantiated. The four substantiated complaints went to the NYPD's trial commissioner. He beat one, he was found guilty of procedural infractions in two, and the trial commissioner found him guilty in

Roberson's complaint, but Kelly overturned the verdict.

Only 54 members of the NYPD's 35,000-person force have received more than 21 complaints; whereas 91% of the force has received fewer than five complaints, according to information provided by the CCRB.

Turco insisted Sbarra was a good cop who ran a good crew.

"He's a very proactive police officer," said Turco. "The reason crime is down in this city is because of guys like this."

Sbarra and his team were involved in over 5,000 arrests and executed 350 search warrants, Turco said.

Lawsuits are another way civilians can register complaints of alleged police misconduct, but for decades, the NYPD has resisted calls to analyze its litigation in order to identify problem officers and behavior.

Some law firms have begun tracking the officers themselves.

Cynthia Conti-Cook said her firm, Stoll, Glickman & Bellina, has been keeping tabs on repeat offenders for years, and there was one name that kept coming up time and again — Daniel Sbarra.

ANDREW THEODORAKIS/NEW YORK DAILY NEWS

Rafael Cruz with his son Eli. Cruz says when he demanded to see his boy at the 81st Precinct house, a group of officers punched and kicked him then shoved his wife against a wall

Yet he repeatedly emerged unscathed, his career arc unaffected by the allegations.

"There are no ramifications," said Conti-Cook, a civil rights lawyer. "The officers' understanding of being sued is that it has no impact on their career or their promotional potential."

With Joseph Stepansky

dgregorian@nydailynews.com

ILLEGAL SEARCH AND MISSING JACKET

Ex-Marine Robert Stephens, 56, said he was heading to a corner bodega in 2010 when five plainclothes officers jumped him.

They threw him against the wall yelling, "Where's it at?" he said.
Stephens was carrying his keys but no ID, so he said he brought the officers to his Bed-Stuy apartment. But instead of letting him use his keys, Stephens said Sbarra ordered his men to smash the door with a battering ram.

"They wouldn't let us in the apartment while they searched it. I kept asking if they had a warrant," said daughter Jacqualine Stephens, 20.

The cops ransacked the apartment and took a North Face jacket with the family's $1,000 tax refund in the pocket, held Stephens overnight, and released him without charges.

Stephens said he got his money back - but not his jacket. Robert sued the city and received a $12,500 settlement. But Jacqualine filed a complaint with the Civilian Complaint Review Board and Internal Affairs caught onto the case.

Sbarra pleaded guilty to having performed the unauthorized search, retaliatory arrest and two other charges, and was docked 20 vacation days — then was promoted to lieutenant four months later.

"Right now I don't have any trust in the New York City police," said Robert.

JOE MARINO/NEW YORK DAILY NEWS

Cynthia Conti Cook is an attorney representing Rafael Cruz.

BASHED IN HER DOOR, BUSTED HER HUSBAND

City employee Tanya Reeves says she saw Sbarra and another officer lurking around in her yard on Cornelia St. in Bed-Stuy when she was on her way to the store.

They told her they were looking for "Black." Reeves told them there was no "Black" who lived there. Reeves husband, Roger, who is black, looked out the second floor window, and she said one of the officers yelled, "That's him! He just robbed someone!"

Reeves told them that was her husband, and he hadn't done any such thing. She said Sbarra told her to let them into her apartment - but she refused and told them they'd need a warrant

"So you want to play tough?" she quoted one of the officers as saying. They handcuffed her, and used a battering ram to break down her door.

They found drugs inside, and charged Reeves' husband with possession and her with obstruction.

The case was eventually dismissed and she got a $35,000 settlement.

DROPS 'N' BOMB ON B'KLYN DRIVER

Lamel Roberson , 29, said he was driving home from his barbershop in 2004 when Sbarra and Officer Ralph Pacheco pulled him over on Bushwick Ave. between Stewart and Conway Sts.

Roberson said he showed his license and registration, but instead of running it through the system, the officers, wearing black tape over their badge numbers, dragged him out of his vehicle.

Roberson said he was pressed against the passenger side door, his arm twisted painfully behind his back, as the officers searched his car and repeatedly called him a "n——," asking, "Where are the drugs and guns at?"

Nothing illegal turned up, but Sbarra and Pacheco nonetheless called for back up.

Roberson got an $18,500 settlement for his lawsuit — with the city making the exceptionally rare move of declining to represent Sbarra and forcing him to pay $1,000 out of his own pocket.

But Roberson told The News, "It can't make up for the disrespect they did to me."

STRIP SEARCH, VERBAL ABUSE

City paralegal Mark Labrew says he was on his way home from work in 2006 when Sbarra and another officer "profiled" and "demeaned" him. Labrew, who is black, said he asked the pair for their names and badge numbers — and they threw him against a gate and frisked him.

Labrew was taken to the 81st Precinct stationhouse in Bed-Stuy, where he said Officer John Kealy — whom he previously sued four years ago for wrongful arrest — spotted him.

Kealy was caught lying under oath in that arrest, which ended with Kealy getting disciplined and Labrew getting a $125,000 settlement. Labrew says after Kealy spoke to Sbarra, cops started calling him names like "f —— animal" and "retarded monkey."

Sbarra strip-searched him, pulling Labrew's underwear down with his boot, according to court documents.

Labrew was charged with marijuana possession and eventually given an adjournment in contemplation of dismissal, a plea deal that means charges are dismissed if the defendant stays out of trouble for a short period of time.

His lawsuit settled for $30,000.

rparascandola@nydailynews.com, jmarzulli@nydailynews.com, bpaddock@nydailynews.com, dgregorian@nydailynews.com

OTHERSTORIES

Index No. :

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

SADIKI ANDERSON, WALLFORD GARCIA, DUDLEY CARTER, ANDRE WALTER, DERRICK MOULTON, DANE OMAR SPENCER, BARRINGTON GREEN AND MARK GOCUL,

Plaintiffs,

-against-

THE CITY OF NEW YORK, COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, DET. BRYAN PITTS OF NBBX, SHIELD #245 AND DET. GENA JONAS OF THE NBBX, SHIELD #4996

Defendants

SUMMONS AND VERIFIED COMPLAINT

PAPA DEPAOLA AND BROUNSTEIN
BY: JOHN R. DEPAOLA
Attorney for Plaintiffs
42-40 Bell Boulevard
Bayside, NY 11361
Tel. (718) 281-4000

To: CORPORATION COUNSEL OF NEW YORK CITY

Attorney(s)for Defendants

Service of a copy of the within is hereby admitted.
Dated

_____

Attorney(s) for